(1)

Supreme Court, U.S.
FILED
SEP 24 1990
JOSEPH F. SPANIOL, JR.
CLERK

90-532

CASE NO. _

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

IRA BANKS
Petitioner,

v.

STERLING MERCHANDISE, INC.,

AND

SHAW,S JEWELERS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONER BRIEF FOR WRIT OF CERTIORARI

IRA BANKS
6507 North 84th Street
Milwaukee, Wisconsin 53224
(414)353-8476

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I

QUESTION PRESENTED

1. Whether The Seventh Circuit Properly Determined In This Case Race Discrimination Claims Without Prejudice Due To Prerequisite Skills Performance Translated Language For Methods Of Calculating Compensation Under Title VII 42 U.S.C. 2000e 2-3 And 42 U.S.C. 1981.

2. Whether One,s Right,s Are Violated By Person Makeing Accusation the item was Placed in One,s Possession The Owner Languish Normal Mediate Data The Materal Allegation Is Is Necessary To a claim The Item Embody,s The Person Require The Same Item Return To The Rightful Person.

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LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Ira Banks, and the respondent Sterling Merchandise, Inc., and Shaws Jewelers sudsidary of Ratner US holding Corp.

Sterling Merchandise, Inc., has Nine Hundred and Seventh Two (972) sub-title jewelry stores throughout the United States East, West,North , and South. Sud title Shaws ,J.B.Robertson, Osterman, LeRoys, Hudson Goodman, Sterling jewelers.

Ratner PLC, an English corpration, shares of which are publicly traded on the london Stock Exchange.

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PETITIONER BRIEF FOR
WRIT OF CERTIORARI

The petitioner; Ira Banks request that a writ of certiorari to review the judgement and openion

of the United States Court of Appeals for the Seventh Circuit entered in the above entitled proceeding on May 30, 1990 and denied rehearing on June 27, 1990.

OPINIONS BELOW

None of the opinions of the district court or the court of appeals for the seventh circuit are published.They are included for the Court,s review in petotioner,s appendix.

The District Court for the Eastern District of Wisconsine judgement in case No. 87-C-0802 petitioner(appendix 1),openions (petitioner Appendix 2-5), the petioner motion for a new trial denied (petitioner appendix 6-9). The United States Court of Appeals for the Seventh Circuit dismiss order case No. 89-2040 (petitioner appendix 22-28) The United States Court of Appeals for the Seventh Circuit denied order petition for rehearing case No. 89-2040 (petitioner appendix 29) .

The District Court for the Eastern District of Wisconsin on January 4,1989 The Court held its

Final pretrial as part of the record, stipulation precious stones , semi-precious stones , watches and rings "language" was before the court at trial.

The District Court For The Eastern District held trail on January 23, 1989 on petitioner complaint an there(3) race discrimination charges. The issues is repair shop supervisor promotion denied, condition and privileges of employment compensation denied, petitioner was the subject of retaliation, racial employment harrasment, deformation - of- charter, racial slurs, profit shareing withheld, innuendoes, and discharged on December 15,1986 for file two previous race discrimination charges with Equal Rights Division and E.E.O.C. (petitioner appendix 71-86). In violation of 42 U.S.C 1337,1343, 42 U.S.C 2000e-5 (f)(1)(2)(3) and U.S.C 1981 .

On January 24, 1989 , the Court entered judgement for the respondent the case was closed. The court On April 26 , 1989 denied petitioner motion for a new trial. (petitioner appendix 6-9) .

BASIS FOR INVOKING JURISDICTION

Invoking Federal jurisdiction under 42 U.S.C 1337, 1343, 42 U.S.C 2000e-5 (f)(1)(2)(3) and U.S.C section 1981.The petitioner brought suit aganist his former employer, Sterling Merchandise inc., and Shaws Jewelers . On January 23-24 1989. The District granted defendant motion to dismiss this case on all claims.

Petitioner file a motion for a amendment of judgement to trial on January 23-24 1989 (record 79) Pursuant to federal rule 59 (a)(b)(d) &(e) Civil procedure. federal rule evidence 106. Statue above stated authorized by title VII of the 1964 Civil Right Act as amended . Bill Of Rights Of The Constitution : The 1st amendment and Ninth amendment. Whereas, petitioner subpoened Mr. Arthur Anderson to testify at trial on January 23, 1989, he fail to appear at trial. The Court omitted its finding in its judgement normal mediate data language of precious an semi-precious stones thus, applied that language to defendant business based on value of

each sale, the responsibility to each sale, therefore omitted facts of pay based on equal worth as employees of respondent. Petitioner made a second request to call his master gemologist appraiser witness to testify in this case. The Eastern District Court order denying petitioner motion petitioner appendix 6-9.

Petitinoer appealed the District Court,s decision to the Seventh Circuit. After preliminary examination of the parties briefs , the Seventh Circuit notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a statement as to need of Orai Argument See Fed R. C. Procedure 34(a); Circuit Rule 34(f). Petitionerfiled such a statement. The request for oral argument was denied. The Seventh Circuit order case No. 89-2040 address petitioner complaint (record 1) and therr (3) discrimination charges in this manner. Shaws Jewelers, Through its regional supervisor Greg Winokur, found Banks, work often to be sloppy and

Untimely. The biggest complaint aganist Banks was that he frequently failed to call a retail store if he knew repair work would not be done by date on which it was promised to the customer. Banks was fired December 15, 1986. The reason stated for his termination was that Banks was "Unable to perform job responsibilities and duties to the satisfaction of Sterling Inc."

To prevail in this court, Banks must demonstrate to the Court that at trial hedid indeed present facts which would entitle him to recovery. Or that he did not have a fair opportunity to present his case, Banks cannot make such a demonstration because has failed to order a transcript of the trial, as was his duty. Fed.R. App. P. 10(b). The only portion of the trialfor which we have a transcript is Banks closeing argument."it is obvious that an appellate court has no alternative but to dismiss an appeal is the absence of the transcript precludes meaningful review"."Because Banks has not presented a record from which we can evaluate his claim of error,

The appeal is dismissed, Fed. R. App. P. 3 (a).

Banks has devoted agreat portion of his argument to a discussion of the grading of precious and semi-precious stones and metal. His argument appears to be that he should not have been punished for deficiencies in his work caused by retail employees misidentification of jewelry. The argument misses the point- even if retail clerks were not trained injewelry grading, Banks was required to prove that he was wrongly punished because of his race. Proof that Banks was treated arbitrarily and unfairly does not constitute proof of discrimina - tion. Banks has not even alleged that other repair shop managers were treated better than he. Absent some such proof, Banks could not prevail . Petitioner Appendix 22-28.

Petitioner sought rehearing from the Seventh Circuit which all judges on the panel voted to deny on June 27, 1990. Petitioner appendix 29.

The jurisdiction of this court,s to review the judgemtnt of the Seventh Circuit is invoked under the laws of The United States, 15 U.S.C 1125, Title VII of the 1964 Civil Rights Act as amended 42 U.S.C 1337, 1343, U.S.C 2000e-5 (f)(1)(2)(3) 42 U.S.C 1981. Amendments to The Constitution Bill Of Rights. United States Constitution First Amendment. United States Constitution Ninth Amendment.

STATUTES AND RULES INVOLVED

Tha relevant statutes and rules involved are as follows:

THE BILL OF RIGHTS

STATUE: Article 1
AMENDMENT TO THE CONSTITUTION
Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press ; or the right of the people peaceably to the to assemble and to petition the government for redress of grievance.

THE NINTH AMENDMENT:
The enumeration in the constitution of certain rights shall not be construed to deny or deparage other by the people.

WISCONSIN STATUE

CHAPTER 942

CRIME-AGANIST REPUTATION AND CIVIL LIBERTIES

942.01 Deformation. (1) Whoever with intent to defame communicates any defamatory to a third person without the consint on the person isguilty of A misdemeanor.

(2)Defamatory matter is anything which exposes the other to hatred,contempt, ridicule,degradation or disgrace in socity or injury in his business or occupation.

(3) This section does not apply if the deformatory matter was true and was communicated with good motives and for justifiable ends or the communication was otherwise privileged.

(4) No person shall be convicated on the basis of an oral communication of defamatory matter except upon the testimony of 2 other person that heard

and understood the oral statement as deformatory or upon a plea of gulity or no contest.

WISCONSIN STATUE

CHAPTER 134

MISCELLANEOUS TRADE REGULATION

134.01 Injury to business;restrant of will. any 2 or more persons who shall combine, associate, agree, mutually undertake or concert to - gether for the purpose of wilfully or maliciously injuring another in his reputation, trade, business or profession by any means whatever,or for the purpose of maliciously compelling another to do or perform any act aganist his will, or preventing or hinding another from doing or performing any lawful act shall be punished byimprisonment in the county jail for not more than one year or by fine not to exceeding $500.

WISCONSIN STATUE

CHAPTER 134

MISCELLANEOUS TRADE REGULATION

134.02 Blacklisting and coercion of coercion of employes. (1) Any 2 or more persons whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same , or for the purpose of procuring or causing the discharge of any employe by threats, promises,circulating blacklists or causing the same to be circulated,or who shall, after haveing dischargeed any employe,prevent or attempt to prevent such employe from obtaining employment with any other person, partnership, company

or corporation by the means aforesaid ,or shall authorize ,permit or allow any of his or their agents to blacklist any dischargeed employe or any employe who has voluntarily left the service of his employer, or circulate a blacklist of such employe to prevent his obtaining employment under any other employer, or who shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by fine of not more than $500 nor less than $100, which fine shall be paid into the state treasury for the benefit of the school fund.

TITLE 15-COMMERCE AND TRADE

15 U.S.C:

1125. False designations of origin and false descriptions forbidden.

(a) Civil Action

Any person who, on or in connection with any goods or service, or any container for goods, uses in commerce any word. term, name, symbol, or device, or any combination thereof, or false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which-

(1) is likely to cause confusion, or cause mistake, or to deceive as to the affilliation connection or association of such person with another person, or as to the

1125:
orgin, sponsorship, or approval of his or her goods, services or commercial activities by another person , or

(2) in commercial advertising or promotion misrepresents the nature, characteristics, qualities, or geographic origin of his or her another person,s goods, services , or commercial activities.

Shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

FEDERAL TRADE COMMISSION 16 CFR PART 23
TITLE 16- COMMERCIAL PRACTICES

23.32 Misrepresentation of weight

"Totle Weight".

(a) It is unfair trade practice to misrepresent the weight of any diamond purchasers as to the weight

of any diamond.

note: The standard units for designation of the weight of a diamond is the carat, which it equivalent to two hurdred miligrams (1/5 gram). while advertisments may state the range of products, all weight representations reguarding individual products shall be subject to a 1/200th of a carat (one-half "point") tolerance.

(b) It is unfair trade practice to state or otherwise represent the weight of all diamonds contained in a ring or other article of jewelry unless such weight figure is accompained with equal conspiculty by words of similar import, so as to indicate clearly that the weight shown is that of all stones in the

article and not that of the center or larger stone.

The general considerations outlined above will authorize this court in respect of petitions for writ of certiorari to review judgement of the United States Court Of Appeals For The Federal Circuit , and of any other court whoes judgements are reviewable by law on writ of certitorari.

STATEMENT OF THE CASE

SterlingMerchandise Inc., And Shaws Jewelers is engaged in the busibess of selling jewelry at retail throughout the United States with several facilities performing in repairs in support of retail jewelry salling.

Petitioner Ira R. Banks was hired by Respondent as a goldsmith . On Aprial 28, 1980. The petitioner filed Three(3) race discrimination Charges aganist respondent with bith the Equral Rights division and E.E.O.C. The dates are

March 12 1986, June 16, 1986 and Dec. 17,1986 . The first charge was filed bacaused petitioner was discriminated against by respondent with its pay syatem , the second charge of discrimination was filed because petitioner was harrased ad denied the pomotion of repair supervisor. The Third charge of discrimination was filed whereas he was the recipient of racial slurs , falsely accuased of wrong doing an termanited by respondent Dec.15,1986. After receiving Three Rught To Sue letters from EEOC on the Three separate charges, petitioner brought suit aginst his former employer in the Eastern District Court Of Wisconsin raising all three charges. Together with a complaint which included but not limited tolost wages, promotions benefits, personal embarrassement deformation-of charter, innuendoes ,social status, despair, greatmental pain and suffering petitioner appendix 71-86,(record 1).Asking job reinstatement, damages)compensatory) in the amount of $39,000,plus Quota compensation , vested profit sharing in the amount of $8,771.18

Whereas, the ending balance in petitioner profit shareing as of July 31, ,1987 is $9,719.91 an it remains in respondent possession.(appendix of the petitioner 91-92),petitioner punitive danages in the amount of $34,000,000,00.

On Dec.26,1987,petitioner served respondent his first request for production of document F.R.C.P 34. Respondent objected thus file a motion for protective order (record 10) in the Eastern District court.The Court protected crucial documents from discovery in this case 87-C-0802.Those doccment in part are :personnel files of respondent employees,Retail sale cost codes. wholesale and retail jewelry and repair prist list.Net sales-gross-profit -mark down report for retail and repair shops nation wide,Invoices charged to each store by vendors, paid or unpaid .See petitioner appendix 13-21.Whereas Eastern district Court order (petitoner appendix 10-12) prohibited petitioner from additional deposition June 1, 1987. respond - ent discovery an deposition ended January 1987.

On january 4,1989 the Eastern District held a final pretrial conference ,The Court stipulated respondent business language precious an semi precious stones , precious and semi precious metal would be before the court at trial as the Court viewed a repair No.17810 (petitioner appeidix 104) an concluded it was fraud . Prohibited by the above Federal statue 15 U.S.C 1125 and 23.32. normal mediate data language in respondent business nation wide. It involve every jewelry industry nation wide.

On January 23,1989 Eastern District Court trial begin in this case '7-C-0802.The person represented respondent as cooprate spokeman an terminated petitioner was greg Winokur. As a result of Mr. Winokur leaving the court trial his deposition was denied (record 36) The Court closed this case premature.

On January 30, 1989, petitioner file a motion for a new trial ,call the Court attetion to the respondent business language,pay system , a witness was subpoena did not testify (petitioner Appendix 118),and it was a violation of petitioner wrights

BEST AVAILA

under the BILL OF RIGHTS 1st and ninth amendment. Eastern District Court denied petitioner motion fot a new trial.See order petitioner appendix 6-9.

The Eastern District summarized it openion in this TitleVII and 1981 claim ,petitioner would have to prove that Shaw,s denyed him promotion was because of race. Racial harrassement and racial slurs will not in and of themselves support claim of racial harrassement , The court openion of the petition Title VII and 1981 retaliation is not quite clear. See petitionet appendix 1-5. The petitioner filed a appeal to the Seventh Circuit.

The Seventh Circuit openion is petitioner can not prevail because he has failed to order a trans cript of the trial, petitioner only ordered a tanscript of of the trial closeing arguments, thus, dismissed this case 89-2040. petitioner file a petition for rehearing but was denied. The Seventh Circuit judgement is, petitioner was not involved in sales, and had no right to expect to be tereated like members of the sales force.He devoted a great

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portion of his argument to precious and semi-precious stones and metal.The argument misses the point--even if retail clerks were not trained in jewelry grading,petitioner was required to prove that he was wrongly punished brcause of his race. Petitioner has not even alleged that other repair shop managers were treated better than he. absent some proof petitioner can not prevail petitioner appendix 22-29.

SUMMARY OF ARGUMENT

The Supreme Court should grant Petitioner,s petition for writ of Certiorari asit is claer petitioner was not given a fair to review an testify as anticipate on all fact in this case he was denied two acute witness for petitioner was denyed to testify at trial,Title VII and 1981 statutes,Bill OF RIGHTS 1st and 9th amendment, Wisconsin statu 942.01,134.01 ,134.02 ,15 U.S.C 1125, federal trade 23.32 warrants a review.The jewelry industry and the public is affected by the questions involved impact on every one who

buy jewelry in a jewelry store,manufactures, distributors and any retailer jeweler throughout the nation.Final judgement on material alligations on any an all petitioner race discrimination charges was no rendered by the Eastern District Court An Seventh Circuit.

In referance to appendix 3 no.2, Eastern district Court found respondent made racial slurs an harrased petitioner, and he was terminated by the respondent, Violation of Title VII 42 U.S.C 2000e 3 and 1981. The Seventh Circuit Found Mr. Greg Winokur found petitioner work to be sloppy and untimely, not done on by due date,Terminated because "Unable to perform job responsibility and duties to the satisfaction of Sterling Merchandise Inc., in Response,respondent was not saleing "date" an respondent referances is a violation of Wisconsin crime stateu 942.01. above statue 15 U.S.C 1125, 23.32, Petition Appendix 50 (23.1,23.2-3,23.18).

The United States District Court For The Southern District Of New York Case No.90 Civ. 1476 has before it similar fraud charges by Jewelers Viglance Committee, Inc. v. Vital inc. and Michal Schutze

Under the laws 15 U.S.C 1125. The JVC,S in this case has the responsibility of protecting public confidence in the jewelry industry .

The first amendment give petitioner the right to petition the government. The Courts said that right is guaranteed . Constitutional law states respondent is libel for deformation. Petitioner charged respondent with deformation of character (record 1 appendix 78) , respondent is libel for documents on record in this case 87-C-0802 .See petitioner appendix additional that hold the respondent libel. Appendix 93, 94,95, 96,97, 98, 99, 100, 105 an 106.

The Court held that determination of malice in deformation suits is subjected to full and thorough review on appeal. Base called for appellate courts to exercise independent judgement and to make their own determination as to whether actual malice had been established with convincing clarity. See The petitioner appendix 32-35. The Courts below ignored petitioner deformation with malice charge aganist respondent in this case.

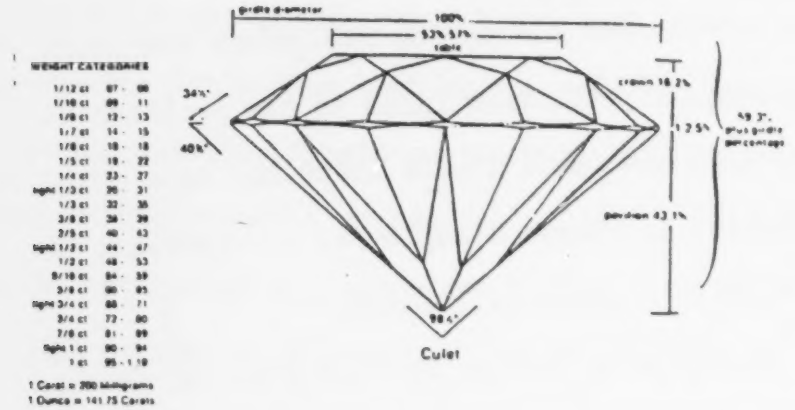
RESAON FOR GRANTING THE WRIT

1. PETITIONER,S PETITION FOR WRIT OF CERTIORARI ON HIS RACE DISCRIMINATION CHARGES WAGES, PROMOTION DENIED, RETALIATION DISCHARGED.

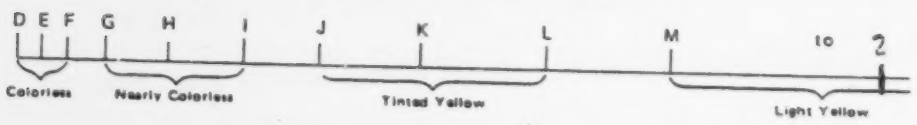
As stated in the list of parties, Sterling Merchandise and Shaw,s Jewelers operated a chain of jewelry stores under a varity of sub-title names through out this Country. Respondent business engagement system for selling jewelry items of precious an semi-precious stones ,precious and semi-precious metal. Each individual stone has its own specific identity size an shape, the value is based on the specifices of the stone, for this Court to grasp respondent retail caucasion managers and repair shop caucasion managers job description ,and pay system, but they had nun skills as required by the respondent an above jewelery trade laws.Petitioner appendix 87-90, peitioner skill 110-113.Petitioner pay was not the same as caucasion,it was Shop production,profibility,amount of stores handled and level of expertise. (Record 36 page 20).Appendix 114-117 document caucasion managers was paid more. but less production, profibility. The Seventh Circuit ,"even if retail clerkswere not trained in jewelry grading,Banks was required to prove he was wrongly

Because of his race.Petitioner appemdix 28.

IDEAL BRILLIANT-CUT PROPORTIONS



COLOR-GRADING NOMENCLATURE



CLARITY-GRADING NOMENCLATURE



The above ddiagram will futher explain the importants of respondent employees of knowing the cut, color clarity and carate weight. Above statue 15 U.S.C. 1125 , title 16. 23.32. any misrepresetation is fraud.Petetion Appendix 93-100 are fraudlant statement aganist petitioner. As stated Above page 19, Fraud was before the Eastern

District Court.The idenity of jewelry items was before the lower Court.pay (wages) promotion denial an retaliation discharged was before the Court of appeals.As petitioner filed in his petition to rehear . Wisconsin 134.01 statu law is a crime to wrongful discharge a employee. In violation of wisconsin statues 111.31-111.

The Seventh Circuit consideration of petition Title VII Claims It has not applied the same standards to its reslution of the Title VII issues as followed by all other courts boths state and Federal as demonstrated by this Case Griggs v. Duke Power Company 401 U.S 424, 429-430 (1971) and Mc.Donnell Douglas, 411 U.S 792, cited bySeventh Circuit Of Appeals.

The Supreme Court grant writ to settle question which are important to the public. Whereas in this case the normal mediate date in respondent business engagement was not address by either District Court or The Seventh Circuit whereas petitioner claims is material allegation . See the above

diagram and Federal trade commission guides for the jewelry industry 16 CFR part 23 Petitioner appendix 47-66 and 101.Whereas, The Sevent Circuit disagree with petitioner that he was selling jewelry as the Seventh Circuit position is U.S. Department of labor wage a nd hour rule 779.241 do not apply to petitioner in respondent business engagement .See petitioner appendix 27, 67-69. In the Eastern District Court For dThe Eastern District of Wisconsin Exhibit 115,petitioner appendix 107 was offered at trial but denied in the court possession is both the envelop and the ring item it self.This envelop an ring document respondent practices is in violation of 15.U.S.C 1125 .

PETITIONER SEEKS JUDGEMENT OF HIS DEFORMATION OF CHARACTER, INNUENDOS IS A QUESTION LAW AN PARTICULAR FACT IS PROPER FOR A GRANT OF CERTIORARI.

2. Petitioner stated before ,the person who fired petitioner was at trial as respondent cooprate spoke person his deposition was taken but denied at trial as evidence. during trial Mr. Winokur left

he left during to avoid fraud and perjury whereas, he personaly wrote these documents petitioner appendix 93-100. respondent is therefore liable under the above laws.to deny petitioner a petition for writ of certiorari , therefore denied petitioner due process of law. The supreme found in this case Herbert v. Lando, 441 U.S 153,99 S Ct. 1655, 60 1.Ed. 2d 115 . The first amendment does not restrict the source from which a plaintiff can obtain evidence."it is essential to proving liability that plaintiff focus on the conduct and state of mind of the defendant. Petitioner Appendix 35. and see Civil Rights Act of 1866 and 1964 discovery sanction 108.8175- 108.8151 . As petitioner some documents was protected from pretective order record 14 an 21. Whereas defendant race discrimination practices have had a disparate impact on minorit group member ,See petitioner appendix 120 -121.

CONCLUSION

The petition is asking This court to resolve all the issues the Sevent Circuit dismissed in

patitioner title VII complaint ,as it is a point of law , important to the public and the jewelry industry. The Sevent Circuit position is petitioner fail to order a transcript of the trial as was his duty. It it petitioner position he order a transcript of the trial an that transcript showed he did not have a fair opportunity to present facts and witness at trial.See Federal Rule Appellate Procedure 10. Futher The Seventh Circuit was goverened by clearly erroneous test F. R. C. Pro. 52 (a).Filing a claim of employment discrimination is protedted activity under Title VII,42 U.S.C 2000e-3 reguardless whether the complaining party prevails in the underlying charge of discrimination. Berg. v. La crosse Cooler Co. 612,F2d 1041, 1043 (7th Cir. 1980). As such Petitioner,s request his Petition for Writ Of Certiorari be granted.And Writ Of Error.

Submitted By:

Ira Banks
6507 North 84th Street
Milwaukee, Wisconsin
53224
(414-353-8476

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OCTOBER TERM, 1989

IRA BANKS
Petitioner,

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PROOF OF SERVICE

The undersigned hereby certifies that copies of petition for writ of Certiorari to the Court of Appeals For The Seventh Circuit was sent to counsel on record for respondent by encloseing copys thereof in an envelop. Mail First Class postage prepaid, address to:

Sue M. Douglas
BUCKINGHAM ,DOOTTLE & BURROUGHS
50 South Main Street
P.O. Box 1500
Akron, Ohio 44309

On this 24 day of September 1990

Ira Banks

90-532

FILED
SEP 24 1990
JOSEPH F. SPANIOL, JR.
CLERK

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FOR THE SEVENTH CIRCUIT

PETITIONER, APPENDIX

IRA BANKS
6507 North 84th Street
Milwaukee, Wisconsin 53224
(414)353-8476

EDITOR'S NOTE:

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UNITED STATES DISTRICT COURT
Eastern District Of Wisconsin

IRA BANKS

V.

STERLING MERCHANDISE, INC.
And Shaw,s Jewelers

CASE NUMBER
87-C-0802

( )JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

(x)DECISION BY COURT. This action came to trial before the court. The issues have been tried and a decision has been rendered.

IT IT ORDERED AND ADJUDGED That the defendant,s motion for involuntary dismissal pursuant to federal rule of civil proceduer 41(b), judgment is granted for the defendant and against plaintiff who takes nothing.

Approved: Jan 26,1989
Thomas J. Curran
United States District Judge.

January 26, 1989
Date

Sofron B. Nedilsky
Clerk
D. McLeod
By Deputy Clerk

The Standards for liability and the burdens of proof are the same on claims brought pursuant to 42 U.S.C. sec 1981 as they are in claim brought pursuant to Title VII, 42 U.S.C sec 2000e et seq.

In a Title VII action the plaintiff bears the burden of persuasion on all issues. He must first prove a prima facie case by preponderance of the evidence after which a presumption of discrimination aries. The defendant rebuts the presumption by artually motivated by the reason articulated. The burden then shifts back to the plaintiff to persuade the court that the proffered reason was a pretext for an actual discriminatory intent. Texas Dept. of Community Affairs v. Burdine. 450 U.S. 248 (1981) applying the formula of McDonnell Douglas Corp v.Green, 411 U.S. 792 (1973).

Ira Banks makes several claims which i think can

be summarized as follows:

(1) He was not promoted to Repair Supervisor in May, 1986. He would probably have to show that the job was available, he applied for the job,he was qualified, he was rejucted and a white was given the job. He would naturally then have to prove that Shaw,s reason for the denial was a pretext for discrimination. In other words, race must be a motivating or substantial factor behind the decision. North v. Madision Area Association for retarded Citizens, 844 F2d 401, 408 (7th Cir 1988) Retarded Citizens.

(2) He was the subject of racial harassment. Racial harassement can form the basis of a claim under Title VII and sec 1981. However "Occasional or sporadic uses of racial slurs or epithets will not in and of themselves support an actionable claims of racial harrassment." North citing Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986). For racial harassment to be actionable, however, it must be sufficiently severe or

pervasive to "alter the condition of(the victim,s) employment and create a abusive working envirnment". Meritor at 67.

(3). Retaliatory Discharge. Finally the plaintiff claims that his termination was in retaliation for having filed two discrimination claims with the EEOC. "To establish a prima facie case of retaliat(ion), the plaintiff must show that (1) (he) engaged in statutorily protected expression ; (2) (he) suffered an adverse action by h(is) employeer; and (3) that there is a casual link between the protected expression and the adverse action. Section 2000e-3 does not require that the challenged employment practice actually violate Title VII; it is sufficient if theplaintiff has a reasonable belief that there is a Title VII violation" Collins v. State of Illinois, 830 F2d 692, 701 (7th Cir 1987) quoting Jennings v. Tinley Park Community Consolidated School District No.146, 796 F2d 962, 966-67 (7th Cir.1968) 107 S.Ct 1895

(1987). IT is obvivious that plaintiff engaged in statutorily protected activity by filing his discrimination charge; he obviously suffered an adverse employment action. If the causal connection is established, the burden shits to the employer to articulate a legitimate non- discriminatory reason for the action (which possibly shold encompass the timing of the.

BY THE COURT
Thomas J. Curran
Judge

The Eastern District Court opinions is in part because this document was taken from the record in this case No. 87-C-0802.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IRA R. BANKS,
Plaintiff,

v. Case No. 87-C-0802

STERLING MERCHANDISE, INC.
AND

SHAWS JEWELERS,
Defendant.

Order

On January 23 and 24, 1989, Ira Banks, representing himself, presented evidence in a trial to the court which he maintained would establish that his former employer discriminated against him because he is black. At the close of the plaintiff case the defendant moved for an order of involuntary dismissel pursuant to Federal Rule Civil Procedure 41(b). The motion was granted and judgement was entered in favor of the defendant on January 26, 1989. Before the court is the plaintiff,s motion to open judgement and

take additional testimony and evidence pursuant to rule 59(a).

Rule (a)(2) provides the district court, in its exercise of sound discretion, with the authority to grant a new trial in nonjury actions. A motion for a new trial should be based upon error of law or mistake of fact and should not be granted except to prevent injustice. See generally 11 C. Wright & A Miller, Federal Practice and Procedure 2805 (1973). "A principle that strikes very deep is that a new trial will not be granted on grounds not called to the courts attention during the trial unless the error was so fundamental that gross injustice would result." Id. at 39.

Mr. Banks wishes his case reopened in order to present testimony of Arthur Anderson and to introduce various documents which were apparently part of the record in the administrative proceeding before the Equal Rights Division of the Wisconsin Department of industry , labor & Human relations. Although it is not clear. it also appears that

Mr. Banks may again wish to raise his entitlement to call an expert. This latter issue was decided and denied at the final pretrial conference.

At the time the plaintiff rested, the court repeatedly question Mr. Banks as to whether he had called allof his witnesses and introduced all of his exhibits. It was only after the court was satisfied that the plaintiff understood what it ment for a party "to rest" did the court permit the defendant to make their motion. Nevertheless, I have reviewed the plaintiff,s brief along with the exhibits,which he wish to introduce and have concluded that the reception of the prooffered exhibits and testimony would not alter the final decision. Mr. Banks seems concerned with the defendants method of compensating their repair shop managers. He may be correct that the method by Sterling could be different. The problem, however, is that Mr. Banks does not produce one scintilla of evidence which would suggest that white managers were treated any differently from

the way he was treated . In fact, he was paid more than most white similarly situated employees. It is this reason that his motion will be denied. accordingly.

IT IS ORDERED that the plaintiff,s motion pursuant to rule 59(a) be hereby denied.

Done and ordered in chambers at the United States Courthouse, Milwaukee , Wisconsin thia 26th day of April 1989 .

Thomas J. Curran
United States District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

IRA R. BANKS,
Plaintiff,

DEC.2, 1987

v.

Case No. 87-C-0802

STERLING MERCHANDISE, INC.
AND SHAW,S JEWELERS,
Defendant.

Order

At the status conference conducted in the above captioned action on December 1, 1987, the plaintiff, Ira R. Banks, appearing pro se, and the defendant, appearing by Sue M. Douglas of Buckingham, Doolittle, & Burroughs, Agreed to entry of the following order.

IT IS ORDERED That:

1. All joinder or amendment to the pleadings shall be filed no later than January 1, 1988.

2. All requests for discovery shall be served by a date sufficiently early so that all discovery in

this case can be concluded no later than June 1, 1988.

3. On or before June 15,1988, Mr. Banks and counsel for defendant shall submit to the court a joint settlement report detailing the currant status of negotiations and efforts made at reaching a settlement.

4. The parties stipulate that no expert witnesses will be called without prior leave of the court.

5. The deadline for the filling of dispositive motions is July 1, 1988.

6. A final pretrial conference has been schedual for December 16, 1988. at 8:45 A.M. The parties shall comply with the court standung Order Prior to final pretrial which in enclosed.

7. A Trial to the court, commancing at 9:A.M. has been schedual for the following dates and in the following position.

Number 4- January 23, 1989
Number 3- April 24, 1989
Number 2- August 14, 1989
Number 1- September 25, 1989

It is estimated the trial will take a maximum of two days.

IT IS FURTHER ORDERED That neitner the pendency of motions nor settlement discussion shall justify delays in the taken of discovery.

Pursuant to Federal Rule of Civil Procedure 16 (c), this Order shall control the course of this action unless modified by a subsequent order.

Done and Ordered in Chambers at the United States Court house, Milwaukee, Wisconsin this 2nd day of December, 1987.

Thomas J. Curran
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IRA R. BANKS,
Plaintiff,

v. Case No.87-C-0802

STERLING MERCHANDISE, INC.,

AND

SHAWS JEWELERS,
Defendants.

Order

In this action brought pursuant to Title VII and 42 U.S.C. 1981, plaintiff Ira Banks alleges that he suffered adverse employment decisions because of his race. He furthur charges that he was the subject of retaliation for haveing filed an EEOC claim and was ultimately terminated because he is black. He seeks reinstatement, back and front pay, declaratory judgement, profit sharing money wrongfully withheld. compensatory and punitive damages, cost and attorney,s fees. The case

is scheduled to be tried to the court on various dates. The first of which is January 23, 1989.

on Aprial 18, 1987, this court conducted a status conference in response to the various discovery motions which had been filed. The plaintiff represented himself, and the defendants Sterling Merchandise, Inc. and Shaws Jewelers were represented by Sue M. Douglas of the law firm of Buckingham Doolittle & Burroughs in Akron, Ohio and local counsel Laurie Petersen of Krukowski & Costello. At the conclusion of the somewhat lengthy conference, the court fashioned a procedure for orderly discovery, which it hoped would resolve past problem and forestall future disputes. Essentially the court ordered that the plaintiff be available for desposition at a date after May 31, 1988, and that he respond to the defendant request for production of documents by May 10, 1988. The court also ordered the defendant make available , in the office of local counsel between April 26,1988 and May 10, 1988 all of the

personnel files requested in the plaintiff,s first request for production documents. The plaintiff was ordered to give local counsel twenty-four hours advance notice of his intention to review the files and was notified that he would be responsible for the cost of reproducing the files he wished copied. These files arenormally kept in the defendant,s principle place of business in Ohio, and the court thus found that it would be burdensome for the records to be away from the home office for longer than thirty days. The time for examination came and went and the plaintiff was deposed on June 9 and 10 1988. A copy of that deposition is in the court,s file. See local Rule 5.04(b).

Eventually the defendants filed a motion to dismiss for abuse of the discovery process,specifically charging that the plaintiff refused to answer questions put to him at his deposition and that he refused to produce documents responsive to the defendants, requests for production. The defendant claim that the plaintiff,s refusal to

respond and the fact that he did not bring documents with him to the deposition prejudiced them and rendered impossible the filing of a dispositive motion. The defendants followed their motion to dismiss with a motion to compel and to determine sufficiency of answers and odjections. By this document the defendant sought the court,s order requiring the plaintiff to supplement his answers to interrogatories and requests for admission . To a vast majority of the interrogatories the plaintiff provided the following answer.

> I object to providing the answer to this interrogatory at this time or in the future until which time the United States District Court For The Eastern District of Wisconsin determine in this case whether defendant Sterling Merchandise,inc and Shaws Jewelers will be effectively compel to follow Federal Rule 34. More specifically plaintiff Ira Banks First and second request for documents he remain in pursuant of through the court. See Court order Aprial 19, 1988. It is Ira Banks position defendant has unequivocally defyed(sec) that Court order. Therefore plaintiff have every intention to challenge prejudice behavior at every level in this lawsuit.

The plaintiff provided the same objection to each of the defendant request for admission.

In response to these motions, plaintiff seems to object to the sufficinecy of the defendant reponses to various discovery demands and lunched a personal attack on defense counsel. For example at page 6 of his brief in opposition to the motion to dismiss, the plaintiff stated "Defendant(sic) counsel in this case has master minded a tact (sic) skill of out sight of this court has resulted into useing (sic) exccssive force aganict (sic) plaintiff as documented by deposition taken on June 9-10, 1988...This glaring attitude of defendant counsel who are both white has resulted into ill will misbehaviour ontheir behalf." The plaintiff further appeared to be of the opinion that he did not have to respond to questions at deposition or to discovery demands until he had received everything he sought from defendants. The court scheduled a statue conference for November 2, 1988, and required the parties , in preparation for the conferencto detail with specificity all issues

remaining in dispute. The conference was duly convened with Ira Banks, again appearing pro se, and the defendants appearing by attorneys Douglas and Petersen.

At the hearing, the plaintiff accused defense of violating the court,s order of April 19,1988. by failing to make available for inspection the personnel records which were the subject of that order and of his request for production. He represented to the court that he called the office of Krukowski and Costello early in the time period in which they were to be made available and was told by an unidentified person that the documents were not their and that he would be notified when they were. The thirty-day period went by and apparently he never called the office again nor did he notify the court that he had been unsuccessful in inspecting the documents. Counsel for the defendants told the court that the first they learned that Mr. Banks was maintaining that he had called the office was when he made this

representation at his deposition . Counsel assured the court that the personnell files were in the office of Krukowski and Costello and that they had no knowledge of Mr. Banks ever having called to inquire about inspecting them. Attorney Peterson proffered two letters which she mailed by certified mail to Mr. Banks , dated August 31, and September 21,1988, both of which were unclained. In these letters attorney Petersen asked Mr. Banks, to state what time and date he placed the telephone call, to whom he spoke, and what was said. The court is satisfied that the personnel files were in the offices , available for inspection at the time ordered in the April 19,1988 order. Mr.Banks has eastalished a pattern of informing the court when he feels he had been wronged. The court finds it incredible that , if those records were not presented as I had ordered, Mr. Banks would not have immediately informed the court unless, of course,he purposely failed to avail himself of the opportunity to inspect the documents so that he could later use

that as an excuse for his own refusel to comply with discovery demands. because I find that the documents were available, the following order was entered.1

---

1 these enumerated requests pertain to the document filed November 1, 1988 entitled " Plaintiff,s Statement Identifying with Specificity Each Item of discovery Remaining in dispute in this case. Pursuant to Court Order Issued October 27, 1988."

IT IS ORDERED that the plaintiff,s request NO.1 IS DENIED. Plaintiff,s request NO. 2 IS DENIED unless the plaintiff examines the documents now in possession of counsel for the defendant commencing at 10:00 A.M. November 2, 1988. Plaintiff ,s NO. 3 IS DENIED. Plaintiff Request NO. 4 IS DENIED.Plaintiff,s request NO.5 IS DENIED. Plaintiff,s request NO. 6 IS DENIED. Plaintiff,s NO.7 IS DENIED because defense counsel stipulated that no action was taken aganist the manager in the Willian Logan Incident.

Plaintiff,s request NO. 8 IS DENIED because the court finds that the defendant have complied with the request. Plaintiff,s request NO. 9 IS DENIED.

The Court futher Orders that the plaintiff will be redeposed at 1:30 P.M. on November 2, 1988.The defendant motion to dismiss IS DENIED without prejudice to its renewal. IT IS FURTHER ORDERED that the plaintiff shall respond to all outstanding requests for admission, interrogatories , and requests for production of documents by November 25,1988.The plaintiff is cautioned that if he fails to comply with legitimate discovery demands, the court will reconsider its denial of the motion to dismiss.

IT IS FURTHER ORDERED that the defendant request for continuance of the final pretrial conference date IS GRANTED. The final conference is rescheduled for January 4, 1989 at 8:45 A.M.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin This 4th day of November 1988.

Thomas J. Curran
United States District Judge

UNITED STATES COURT OF APPEALS

For The Seventh circuit

Chicago, Illinois 60604

Submitted May 17, 1990

May 30, 1990

Before

HON. Joel M. Flaum, Circuit Judge

HON. Frank H. Easterbrook, Circuit Judge

HON. Daniel A. Manion, Circuit Judge

Ira Banks, Plaintiff-Appellant	Appeal from the Unuied States District For the Eastern District of Wisconsin
vs.	
No.89-2040	
Sterling Merchandise, Inc., and Shaw,s Jewelers, Defendant-Appellees	No.87 C 0802 Thomas J. Curran Judge

Order

Ira R. Banks was hired by Sterling Merchandise Inc., doing business as Shaws Jewelers, On April 28, 1980 as a jewelry repairman and goldsmi

In time, Banks was promoted to repair shop manager. In that job Banks was responsible for supervising a repair shop in Milwaukee, Wisconsin which handled repair orders taken at seven Shaws Jewelers locations . The relationship between Banks and his employer was a stormy one . Banks insisted that he was not being adequately compensated because he is an

---

* After preliminary examination of the briefs, the court notified the parties that it had tentayively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a " Statement as to Need of Oral Argument." SeeFed. R. Appeal P. 34(a); Circuit Rule 34(f) Appellant has filed such a statement. Upon consideration of that statement, the briefs, and record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

African-American. Shaws Jewelers, through its regional supervisor, Greg Winokur, found Banks , work often to be sloppy and untimely. The biggest complaint aganist Banks was that he frequently failed to calla retail store if he knew repair work would not be done by the date on which it was promised to the customer. Banks filed a charge of discrimination with the Wisconsin Department of Industry , Labor and Human Rights and with the federal Equal Employment Opportunity Commission over perceived differences between the pay he received and the compensation of white employees. Soon thereafter, he filed a second charge, alleging retaliation for the first Charge.

Banks was fired on December 15,1986, The reason stated for his termination was that Banks was "(u)nable to perform job responsibilities and duties to the satisfaction of Sterling Inc." Banks believed that was not the real reason, and filed a third administrative charge of discrimination. Aftering reciving a right-to-sue letter,

Banks filed this suit in federal court under Title VII and under 42 U.S.C. 1981. The case went to trial on January 23 and 24 1989, with Banks presenting his own case. At the close of the plaintiff,s evidence, the defendants moved for involuntary dismissal under Fed. R. Civ. P. 41 (b), on grounds that Banks had not shown facts which would entitle him to relief. The district court granted the motion, and denied Banks, motion under Fed. R. Civ. P. 59 for a new trial. Banks took a timely appeal to this Court.

To prevail inthis appeals, Banks must demonsttrate to the Court that at trial he did indeed present facts which would entitle him to recivery, Chaiffetz v. Robertson Research Holding, Ltd. 798 F. 2d 731 (5th Cir. 1986), or THAT HE DID NOT HAVE A FAIR OPPORTUNITY TO PRESENT HIS CASE. Pughsley v. 3750 Lake Shore Drive Coop. Bidg., 463 F. 2d 1055 (7th Cir. 1972). Banks cannot make such demonstraction because has failed to order a transcript of the trial, as was his duty.

Fed R. App.P. 10(b). The only portion of the trial for which we have a transcript is Banks, closeing argument. We have no information as to what was and was not presented at trial aside from the representation made in the briefs of the parties. Briefs, however, do not subsitute for an official record. " It is obvious that an appelate court has no alternative but to dismiss an appeal if the absence of the transcript precludes meaningful review." Fisher v. Krajewski, 873 F. 2d 1057, 1061 (7th Cir. 1989), cert, 110 S.Ct. 719 (1990).Because Banks has not presented a record from which we can evaluate his claims of error, the appeal is dismissed. Fed. R. App. P. 3(a).

Even if we were to accept the account given in thebriefs of what took place at trial, we would affirm. The claim under 42 U.S.C. 1981, alleging a charge in the condition of employment. cannot stand after Patterson v. Mclean Credit Union,109 S. Ct. 2363 (1989). Banks, argument on his Title VII claim is that he a black man and a repair

shop manager , was not paid the same as retail store managers, who were white. To avoid the obvious objection that running a repair shop is different from running a retail store, Banks cites to a Department of labor regulation under the fair labor Standards Act, which states that, "As long as the employee inany way participates in the sale of the goods he will be considered to be selling the goods, whether he physically handles them or not. thus, if the employee performs any work that in a particular sense is an essential part of consummating the sale of of the particular goods ,he willbe considered to be selling the goods, 29 C.F. R. 779,241 (1989). this regulation, according to Banks , requires that a repair shop manager be compensated in tha same way as retail store managers. We disagree. Even if this case were brought under the fair labor Standards Act rather than Title VII, it is our view that a repair shop is not an essential part of consummating a sale a jewelry. Rather, repair is is a service that a

jewelry seller need not necessarly provides. Banks was not involved in sales, and had no right to expect to be treated like members of the sales force.

Banks has devoted a great portion of his argument to a discussion of the grading of precious and semi-precious stones and metals. His argument appears to be that he should not have been punished for deficiencies in his work caused by retail employees misidentification of jewelry. The argument misses the point even if retail clerks were not trained in jewelry grading, Banks was required to prove that he was wrongly punished because of his race. Proof that Banks was treated arbitrarily and unfairly does not constitute proof of discrimination. An employer may be unreasonable -- the law only prohibits discrimination. Palucki v. Sears, Roebuck & CO 879 F. 2d 1568, 1571 (7th Cir. 1989). Banks has not even alleged that other repair shop managers were treated better than he. Absent some such proof, Banks could not prevail.

DISMISSED

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

June 27, 1990

Before

HON. Joel M. Flaum, Circuit Judge

HON. Frank H. Easterbrook, Circuit Judge

HON. Daniel A. Manion, Circuit Judge

IRA R. BANKS, Plaintiff-Appellant	)Appeal from)the United)States District
v. NO.89-2040	)Court for The)Eastern District
STERLING MERCHANDISE, INC.,	)of Wisconsin
AND	) No.87-C-0802
SHAWS JEWELERS, Defendant-Appellee.	)Thomas J.)Curran , Judge

ORDER

On consideration of the petition for rehearing filed in the above-entitle cause on June 13, 1990, all of the judges on the original panel have voted to dent a rehearing. Accordingly, IT IS ORDERED that the afrosaid petition for rehearing be and the same is hereby , DENIED.

(29)

AO 440 (Rev. 8/85) Summons in a Civil Action

United States District Court

SOUTHERN DISTRICT OF NEW YORK

JEWELERS VIGILANCE COMMITTEE, INC.,

Plaintiff,

V.

VITALE INC. AND MICHAEL SCHUTZE,

Defendants.

90 CIV. 1476

SUMMONS IN A CIVIL ACTION

CASE NUMBER

TO: (Name and address of Defendant)

Vitale Inc.
10501 N. Central Expressway
Suite 318
Dallas, Texas 75231

Michael Schutze
Vitale Inc.
10501 N. Central Expressway
Suite 318
Dallas, Texas 75231

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (Name and address)

Roberta S. Bren
Darby & Darby, P.C.
805 Third Avenue
New York, New York 10022

an answer to the complaint which is herewith served upon you, within _____ days after service this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be ta against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT, CLERK

CLERK

DATE

BY DEPUTY CLERK

(30)

90 CIV. 1476

JUDGE LOWE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JEWELERS VIGILANCE COMMITTEE, INC.,	:	
Plaintiff,	:	
v.	:	Civil Action No.
VITALE INC. AND MICHAEL SCHUTZE,	:	
Defendants.	:	

COMPLAINT

Plaintiff, Jewelers Vigilance Committee, Inc. ("JVC") complains of Defendants, Vitale Inc. ("Vitale") and Michael Schutze ("Schutze") as follows:

PARTIES AND JURISDICTION

1. This is an action for unfair competition arising under the laws of the United States, 15 U.S.C. 1125, and for deceptive acts and practices in the conduct of business under New York General Business Law §349.

2. Jurisdiction is conferred upon this Court by 15 U.S.C. §1121 and 28 U.S.C. §1338. On information and belief, defendants are subject to jurisdiction of this Court and venue is proper within the Southern District of New York pursuant to 28 U.S.C. §1391.

3. Plaintiff, JVC, is a trade association, incorporated under the laws of the State of New York, with a


Ralph C. Chandler, Richard A. Ensign,
and Peter G. Ronstrom

FREE PRESS

Libel

***New York Times, Inc. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964)** Held that publications may not be subjected to libel damages for criticism of public officials and their official conduct unless deliberate malice could be shown. *Sullivan* attached stringent conditions to certain kinds of libel actions involving speech attacking public officials. Libel or intentional defamation has not generally been considered a protected expression. A state libel action was brought by a police commissioner in an Alabama court against the *New York Times* for its publication of a paid advertisement which charged police mistreatment of black students protesting racial segregation. It was stipulated that the advertisement contained errors of fact. The trial judge found the statements in the advertisement to be libelous, instructed the jury that injury occurred through publication, and opined that both compensatory and punitive damages could be presumed. Substantial damages were awarded by the jury, which also found malice on the part of the *Times*. The Supreme Court reversed the judgments in a unanimous decision. The Court's position was that libel law must provide free speech safeguards. To allow unrestricted libel actions "would discourage newspapers from carrying 'editorial advertisements' of this type, and so might shut off an important outlet for the promulgation of information and ideas." Such laws would shackle the First Amendment in its attempt to secure protection for the widest possible dissemination of information from diverse and antagonistic sources. Even the factual errors did not jeopardize the advertisement's protected status. The privileged position of the advertisement, clearly "an expression of grievance and protest on one of the major public issues of our time," is not contingent on the truth, popularity, or social utility of the ideas and beliefs which are offered. Mistakes or errors of fact are inevitable in free debate and must be forgiven if freedom of expression is to have the breathing space it needs. Neither does injury to the reputation of a public official itself justify limiting expession. "Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations." Any rule "compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to 'self-censorship.'" Such a rule severely dampens the vigor and limits the variety of public debate. The Court did allow for recovery of damages where it can be proved that statements were made with actual malice; that is, with knowledge that it was false or with reckless disre-

gard of whether it was false or not. In concurring opinions, Justice Black and Goldberg argued for the unconditional insulation of the press from libel suits, at least with regard to public officials. *See also* BILL OF RIGHTS, p. 7; FIRST AMENDMENT, p. 77; *HERBERT V. LANDO* (441 U.S. 153: 1979), p. 123.

Significance *New York Times, Inc. v. Sullivan* (376 U.S. 254: 1964) expanded the Court's experience with seditious libel, a special category of libel which involves defamation of the government and its officials. The Alien and Sedition Acts of 1798 would have provided a basic test of seditious libel, but they never reached the Court. The Court has generally included libel in the category of unprotected speech. *Sullivan* provided the Court an opportunity to refine that classification. Libel laws cannot inhibit debate on public issues even if the debate includes strong and unpleasant attacks on the government and its officials. *Sullivan* did hold that public officials could protect themselves through libel actions in situations where false statements were made with reckless disregard of their untruthfulness and with "actual malice." But the *Sullivan* decision approaches an almost unconditional free press position relative to public officials. The Court soon extended *Sullivan* to criminal libel prosecutions in *Garrison v. Louisiana* (379 U.S. 64: 1964). In *Garrison*, the Court said that regardless of limitations in other contexts, "where the criticism is of public officials and their conduct of public business, the interest in private reputation is overborne by the larger public interest, secured by the Constitution in the dissemination of the truth." Yet in *McDonald v. Smith* (86 L.Ed. 2d 384: 1985), the Court held that communications to governmental officials influencing reputation are not immune from libel suits. McDonald had written to President Reagan urging the president not to nominate Smith to the position of United States Attorney. Smith did not receive the nomination and subsequently filed a libel action against McDonald, claiming his letters were malicious and knowingly false. McDonald argued that he was immune from such suit under his First Amendment right to petition the government. In a unanimous decision, the Court said that while the right to petition is guaranteed, "the right to commit libel with impunity is not." The question of whether groups may be protected from defamatory statements was addressed in *Beauharnais v. Illinois* (343 U.S. 250: 1952). In a 5–4 decision, the Court upheld an Illinois statute prohibiting derogatory comment about any racial or religious group. The Court said that "we are precluded from saying that speech concededly punishable when directed at individuals cannot be outlawed if directed at groups with whose position and esteem in society the affiliated individual may be inextricably involved." The dissenters

in *Beauharnais* vigorously argued that such a law would greatly inhibit public debate. This view eventually prevailed in *Sullivan* and diminished the current applicability of *Beauharnais*. The Court later reinforced the deliberate malice standard of *Sullivan* in *Bose Corporation v. Consumers Union of the United States, Inc.* (466 U.S. 485: 1984). The Court held that determination of malice in defamation suits is subject to full and thorough review on appeal. *Bose* called for appellate courts to exercise independent judgment and to make their own determination as to whether actual malice had been established with "convincing clarity." This is a more rigorous standard than is normally utilized at appellate levels, and it offers greater protection to publishers defending libel actions by creating a two-tiered system for finding actual malice.

Editorial Privilege

***Herbert v. Lando*, 441 U.S. 153, 99 S.Ct. 1635, 60 L.Ed. 2d 115 (1979)** Declared that a plaintiff in a libel action is entitled to inquire into the editorial processes of the defendant. Herbert was a retired Army officer with extended service in Vietnam. He received widespread media attention when he accused his superior officers of covering up reports of atrocities and other war crimes. Herbert conceded his public figure status which required him to demonstrate that the defendants had published a damaging falsehood with actual malice. Some three years after Herbert's disclosures, the Columbia Broadcasting System broadcast a report on Herbert and his charges on the television program "60 Minutes." Lando produced and edited the program. He also published an article on Herbert in the *Atlantic Monthly*. Herbert's suit alleged that the "program and article falsely and maliciously portrayed him as a liar and a person who had made war crime charges to explain his relief from command." In attempting to develop proofs for his case, Herbert tried to obtain the testimony of Lando before trial, but Lando refused, claiming the First Amendment protected against "inquiry into the state of mind of those who edit, produce, or publish, an into the editorial process." The Supreme Court found against Lando in a 6–3 decision. The Court held that the First Amendment does not restrict the sources from which a plaintiff can obtain evidence. Indeed "it is essential to proving liability that plaintiffs focus on the conduct and state of mind of the defendants." If demonstration of liability is potentially possible, "the thoughts and editorial processes of the alleged defamer would be open to examination." Such examination includes being able to inquire directly from the defendants whether they knew or had reason to suspect that their damaging publication was in error. The editorial privilege sought by Lando would constitu-

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COX v. CONRAIL

U.S. District Court,
District of Columbia

COX v. CONSOLIDATED RAIL CORPORATION; FRAZIER, et al. v. SAME, et al., Nos. 83-0514 and 85-0845. March 12, 1987

CIVIL RIGHTS ACTS OF 1866 AND 1964

1. Discovery — Sanction ▸108.8175

Fourteen proposed witnesses whose identities were not revealed until after close of discovery may not testify, despite contention that their identities could not be uncovered any sooner, where fact that only six of 20 proposed witnesses were identified before discovery closed suggests that proper basis did not exist for bringing some allegations, there was minimum of two years to conduct discovery, and identification of witnesses on eve of trial deprived employer and union of ability to prepare for their anticipated testimony.

2. Discovery — Sanction ▸108.8175

Presidents of three local branches of national civil rights organization and organization paralegal may testify despite failure during discovery to identify them as potential witnesses, where presidents' depositions can be taken before trial, paralegal's proposed testimony as to her preparation of calculations and exhibits does not appear substantial, and because branches are named plaintiffs, harm to them if presidents could not testify appears to be much greater than any potential prejudice to employer and union.

3. Discovery — Sanction ▸108.8175

Individual whose identity was not revealed until after close of discovery may not testify as expert witness, but he may testify as non-expert witness with regard to civil rights organization's efforts to document and eradicate discrimination in railroad industry, where his proposed testimony would not so unfairly prejudice employer and union as to justify its exclusion at trial.

4. Discovery — Statistics ▸108.8151 ▸108.8125

Individual who was not identified as rebuttal witness before close of discovery may testify as rebuttal witness as to statistics issue, even though there was no request for extension of time to designate him as such, where his counterpart was not designated until nine days before close of discovery, and pretrial brief that named individual as expert witness was filed shortly after end of 30-day period that normally would have been granted to designate rebuttal expert.

See also 31 FEP Cases 101, 557 F.Supp. 1261; 38 FEP Cases 455; 41 FEP Cases 665; and 47 FEP Cases 680.

Lezli Baskerville, Washington, D.C., and Ralph C. Thomas, III, Washington, D.C., for plaintiffs.

Thomas E. Reinert, Jr., Washington, D.C., for defendant employer.

Full Text of Opinion

THOMAS A. FLANNERY, Senior District Judge: — This matter comes before the court upon defendant United Transportation Union's motion to strike certain witness designations and upon defendant Consolidated Rail Corporation's motion in limine. After hearing oral argument, and after considering defendants' motions, plaintiffs' opposition, and the entire record in this case, defendants' motions will be granted in part and denied in part for the reasons stated below.

I. BACKGROUND

The case at bar is an action based on allegations of race and sex discrimination. The first complaint was filed with this court by plaintiff, Samuel Cox, against Consolidated Rail Corporation ("Conrail") on February 22, 1983. A separate action was filed in the United States District Court for the Eastern District of Pennsylvania by plaintiffs Lawton Frazier, Odyssey Gray, William Harling, Denise Johnson, Beachey Thompson, and three branches of the National Association for the Advancement of Colored People ("NAACP") against Conrail and the United Transportation Union ("UTU") on September 28, 1984.

The Pennsylvania District Court granted Conrail's motion to transfer the *Frazier* action to this court on February 7, 1985. The *Cox* and *Frazier* actions were subsequently consolidated. Plaintiffs' motions for class certification were denied. The matter is therefore before the court in regard to the individual claims of the plaintiffs in the *Cox* and *Frazier* cases.

Discovery proceeded for almost four years in the *Cox* case and for approximately two years in the *Frazier* case. All discovery was finally concluded by December 24, 1986, with the minor exception of a few expert witness depositions and plaintiffs filing supplemental responses to defendant Conrail's second set of interrogatories and second request for the production of documents (all of which are now complete). The trial has been bifurcated into issues of liability and damages, and is scheduled to commence on March 23, 1987.

On January 28, 1987, plaintiffs filed a pre-trial brief naming thirty-seven fact witnesses and two expert witnesses. On February 3, 1987, defendant

UTU filed a motion to strike fourteen of the fact witnesses and Dr. Herbert Hill, one of the expert witnesses. On February 5, 1987, defendant Conrail filed a motion in limine to preclude the testimony of the fourteen fact witnesses contested by UTU, the testimony of four other fact witnesses, the expert testimony of Dr. Herbert Hill, and the portion of Dr. Richard Andrulis' expert testimony relating to the issue of whether Conrail's ETP testing program has a statistically significant adverse impact on blacks and females. These are the two motions pending before the court.

II. THE FOURTEEN FACT WITNESSES

Plaintiffs designated the following individuals to "testify on direct or rebuttal, if appropriate, as to discrimination suffered by [him or her] and other blacks as firemen and in the ETP program by Conrail and the United Transportation Union":

1. A.B. Campbell
2. Alvin B. Crosby
3. Theodore Green
4. Linwood M. Lyles
5. John D. Mack
6. Willie McClure
7. E.E. Pettiford
8. John C. Randolph
9. James V. Reese
10. Paul D. Robertson
11. Bradford G. Thompson
12. Wayne Worth
13. Marian J. Williams
14. Edward L. Youngblood

PRETRIAL BRIEF OF PLAINTIFFS LAWTON FRAZIER, ET AL. [hereinafter PRETRIAL BRIEF], at 47-50.

[1] Defendants contend that despite numerous interrogatories whose scope clearly encompassed the proposed testimony outlined above, plaintiffs failed to identify these fourteen witnesses at any time prior to the close of discovery. Defendants argue, therefore, that given this eleventh hour identification, plaintiffs should be precluded from introducing testimony from these witnesses.

Plaintiffs attempt to justify their failure to identify the witnesses earlier by contending that the identities could not be uncovered any sooner. This position is simply untenable. The instant case does not involve a situation where plaintiff has just discovered one or two new witnesses who are able to provide additional support to its central claim. Plaintiffs here used the discovery process to find the vast majority of the witnesses to be used to support one of the key allegations of their complaints — that Conrail engaged in systematic and pervasive discrimination.

Of the twenty witnesses (excluding the plaintiffs themselves) designated to testify about the discrimination they have suffered, only six were identified prior to the close of discovery. This situation suggests that plaintiffs did not have a proper basis for bringing some of their allegations. Plaintiffs should have been aware of the circumstances supporting the allegations of their complaints at the time they filed this action. Relying on a review of defendants' records to determine the facts supporting their allegations reflects plaintiffs' misuse of the discovery process.

Furthermore, plaintiffs had two years, at a minimum, to conduct discovery. Yet they waited until the eve of trial before finally identifying so many witnesses. Even if plaintiffs did not deliberately withhold the identities of these individuals, they obviously failed to plan their discovery appropriately. If plaintiffs knew of the existence of these witnesses but could not provide their names and addresses until the receipt of explicitly designated records from defendants, then plaintiffs should have either informed this court and sought an adjustment in the discovery schedule to make appropriate time allowances, or, at the very least, informed defendants in the responses to their interrogatories. It is patently absurd for plaintiffs to suggest that the answer "[a]ny and all minorities working for Conrail ..." could have adequately notified defendants that there would be such a late identification of so many witnesses.

As a result of plaintiffs' failure to identify the new witnesses in a timely manner, defendants are unable to take their depositions or to otherwise prepare for their anticipated testimony. If these belatedly identified witnesses are permitted to testify, defendants clearly will be prejudiced. Plaintiffs have attempted to interject a very large number of new witnesses shortly before trial. They have been unable to credibly justify their delay in this matter. This consolidated action has been pending for several years. The court cannot countenance plaintiffs' actions in this regard. The primary purpose of the discovery rules, prevention of surprise to one's opponent, would be undermined if these fourteen witnesses were permitted to testify. *See Davis v. Marathon Oil Co.*, 528 F.2d 395, 403-04 (6th Cir. 1975). Plaintiffs are therefore precluded from introducing the testimony of any of these fourteen new fact witnesses.

III. NAACP FACT WITNESSES

Plaintiffs have designated the following Presidents of NAACP branch

offices to "testify about the historical efforts of the NAACP, and specifically the [witness'] Branch, to seek the total elimination of discrimination based on race practiced against persons already employed in the railroad industry, including Conrail, and to open the doors of employment in the railroad industry to additional blacks":

1. Alphonso Deal (Philadelphia branch)
2. Enolia P. McMillan (Baltimore branch)
3. Dr. Edward A. Hailes, Sr. (D.C. branch)

PRETRIAL BRIEF, *supra*, at 47-48. Additionally, plaintiffs have designated Ms. Olinda Moyd, a paralegal with the NAACP, to "testify as to calculations, individual and summary exhibits she prepared" from the records of the defendants. PRETRIAL BRIEF, *supra*, at 49.

[2] Conrail contends, for the same reasons noted previously with regard to the fourteen fact witnesses, that plaintiffs' failure to identify these four witnesses during discovery should result in their preclusion at trial. Indeed, as this court pointed out during the oral argument on February 13, 1987, these four witnesses could easily have been identified earlier. Plaintiffs attempt to justify the failure to identify these witnesses by contending that defendants should have known to pursue discovery related to the NAACP because three of its branches are named as plaintiffs. It does not follow, however, that because an organization is named as a party its officials necessarily intend to testify. Further, plaintiffs did not put defendants on notice as to which NAACP officials would testify.

Nevertheless, this court will not preclude plaintiffs from introducing the testimony of these witnesses at trial. This court is not convinced defendants will suffer significant prejudice if the witnesses are allowed to testify and defendants are permitted to depose them between now and the start of trial. The paralegal's proposed testimony does not appear to be very substantial. While the issue is a closer call with respect to the branch presidents, because the NAACP branches are named plaintiffs the harm they would suffer if their officials were barred from testifying appears to be much greater than any potential prejudice to the defendants. Therefore, in the exercise of this court's discretion, plaintiffs may introduce the testimony of the four NAACP fact witnesses at trial, and defendants may depose those witnesses between now and March 23, 1987.

IV. DR. HERBERT HILL

Plaintiffs have designated Dr. Herbert Hill as one of their two expert witnesses. Plaintiffs stated in their pre-trial brief that "Dr. Hill is anticipated to testify regarding the history of racial discrimination experienced by blacks in the Railroad Industry and as to the NAACP involvement to eliminate racial discrimination by the railroads and railroad unions." PRETRIAL BRIEF, *supra*, at 52. Both defendants argue that Dr. Hill should be precluded from testifying since plaintiffs failed to identify him earlier.

Plaintiffs' only justification for failing to identify Dr. Hill before the close of discovery is the bald assertion that "[i]t was only after determining the full extent and relationship of the ETP program to Conrail's and the UTU's predecessors did it become obvious that testimony from Professor Hill would be necessary ...." PLAINTIFFS' OPPOSITION TO DEFENDANT UTU'S MOTION TO STRIKE CERTAIN WITNESS DESIGNATIONS OF PLAINTIFFS and OPPOSITION TO DEFENDANT CONRAIL'S MOTION IN LIMINE TO PRECLUDE THE TESTIMONY OF CERTAIN WITNESSES DESIGNATED BY PLAINTIFFS [hereinafter PLAINTIFFS' OPPOSITION], at 10.

[3] It is clear Dr. Hill must be precluded from testifying as an expert witness. Plaintiffs were specifically ordered on August 28, 1986 to designate their expert witnesses no later than September 16, 1986. Because of a dispute involving the order of proof with regard to statistical and job-relatedness issues, this court issued a further order on November 24, 1986 regarding the designation of experts testifying to those particular issues. That later order did not otherwise modify the August 28th order. Since Dr. Hill will not be testifying as to statistical or job-relatedness issues, plaintiffs were bound by the August 28th order to designate him no later than September 16, 1986. The designation of Dr. Hill as an expert witness in the pretrial brief is patently a violation of this court's orders.

Plaintiffs also seem to contend that Dr. Hill may testify as a fact witness with regard to "the actual efforts of the [NAACP] to document and eradicate the referenced discriminatory activities in the railroad industry by Defendants and their predecessors." PLAINTIFFS' OPPOSITION, *supra*, at 10. As defendants point out, however, Dr. Hill's designation as a fact witness suffers from the same disability as the previously discussed fourteen new fact witnesses — plaintiffs

failed to identify him during discovery.

Nevertheless, this court will permit plaintiffs to call Dr. Hill solely in his capacity as a fact witness, not as an expert. As discussed earlier with regards to plaintiffs' designation of the NAACP branch presidents, this court is not convinced defendants are so unfairly prejudiced by this proposed testimony as to justify its exclusion at trial. Defendants, of course, may depose Dr. Hill before trial commences.

V. DR. RICHARD ANDRULIS

Plaintiffs have designated Dr. Richard Andrulis as a rebuttal expert witness on two issues. First, he is expected to testify as to the "non-job-relatedness" of defendants' ETP testing program. Second, he is expected to testify as to the statistical significant adverse impact of the ETP testing program on blacks and females. Defendant Conrail has no objection to Dr. Andrulis testifying with regard to the former issue. Conrail contends, however, that Dr. Andrulis should be barred from testifying with regards to the latter issue since this court ordered on November 24, 1986 that plaintiffs were precluded from introducing expert testimony to establish their prima facie case of discriminatory impact.

Plaintiffs point out, however, that Dr. Andrulis will not be used to establish their prima facie case. He is simply a rebuttal witness. The point is well taken. Dr. Andrulis' testimony on statistics cannot be barred on the basis of the November 24th order. In the memorandum supporting their Fed. R. Civ. Pro. 26(b)(4) statement, plaintiffs stated that they had chosen not to use expert testimony to establish discriminatory impact but that if defendants decided to utilize an expert to show lack of adverse impact, then as part of their case in rebuttal, plaintiffs might designate an expert on the issue.

[4] Had plaintiffs identified Dr. Andrulis as their rebuttal expert on the statistical issue before the close of discovery, his testimony clearly would be admissible. By once again waiting until this late date to give defendants notice, however, plaintiffs have unnecessarily complicated matters. In spite of this delay, this court will not preclude this expert testimony. Defendants did not designate their expert on the statistics issue until December 15, 1986 — that is, until shortly before the discovery cutoff on December 24, 1986. Admittedly, plaintiffs should have requested an extension of time to designate a rebuttal expert. They knew this court had granted enlargements of

time for other, narrowly-defined matters. Furthermore, plaintiffs have offered no reason at all for not identifying Dr. Andrulis earlier.

Despite these shortcomings, however, Dr. Andrulis' testimony as rebuttal evidence regarding the statistics issue will not be barred. As noted in this court's November 24, 1986 order, defendants had wrongfully refused to designate their expert on the statistics issue. The result was that defendants did not finally designate their expert on the matter until December 15th. In the normal course of handling such matters, this court would have given plaintiffs another thirty days to designate a rebuttal expert, or until about January 15, 1987. Since plaintiffs' pretrial brief was filed shortly after that date (i.e., on January 28th), it does not appear that defendants will be significantly prejudiced if this rebuttal testimony is admitted at trial.

Of course, defendants may depose Dr. Andrulis before trial, but only with regard to his proposed testimony on the statistics issue. Finally, it must be emphasized that plaintiffs may only introduce Dr. Andrulis' testimony on the statistics issue if defendants choose to utilize their expert on the subject to show a lack of adverse impact.

VI. CONCLUSION

Plaintiffs' have not justified their failure to identify, prior to the close of discovery, the fourteen new fact witnesses designated in their pre-trial brief. The prejudice to defendants from interjecting so many new witnesses on the eve of trial is obvious. Defendants' motions to preclude those witnesses' testimony are therefore granted. The prejudicial impact regarding the four NAACP fact witnesses, Dr. Herbert Hill, and Dr. Richard Andrulis, however, is not deemed as significant. Defendants' motions to preclude those witnesses' testimony are thus denied. An appropriate Order accompanies this Memorandum Opinion.

Order

This matter came before the court upon defendant United Transportation Union's motion to strike certain witness designations and upon defendant Consolidated Rail Corporation's motion in limine. After hearing oral argument, and after considering defendants' motions, plaintiffs' opposition, and the entire record in this case, it is, by the court, this 12th day of March, 1987,

ORDERED that for the reasons stated in the accompanying Memoran-

dum Opinion, defendants' motions are granted in part and denied in part; and it is further

ORDERED that plaintiffs shall be precluded from introducing any testimony from the following witnesses:

1. A.B. Campbell
2. Alvin B. Crosby
3. Theodore Green
4. Linwood M. Lyles
5. John D. Mack
6. Willie McClure
7. E.E. Pettiford
8. John C. Randolph
9. James V. Reese
10. Paul D. Robertson
11. Bradford G. Thompson
12. Wayne Worth
13. Marian J. Williams
14. Edward L. Youngblood

and it is further

ORDERED that plaintiffs shall be precluded from introducing the testimony of Dr. Herbert Hill as expert opinion, but may utilize him to the extent he testifies as a fact witness; and it is further

ORDERED that defendants may depose Dr. Hill regarding his proposed testimony at any time prior to the commencement of trial; and it is further

ORDERED that plaintiffs may introduce the testimony of the four NAACP fact witnesses (Alphonso Deal, Emolia McMillan, Dr. Edward A. Hailes, Sr., and Olinda Moyd), and defendants may depose those witnesses at any time prior to the commencement of trial; and it is further

ORDERED that plaintiffs may introduce as rebuttal evidence the testimony of Dr. Richard Andrulis regarding the issue of whether defendants' ETP testing program has a statistically significant adverse impact on blacks and females, but only if defendants utilize their expert on that issue to show a lack of adverse impact; and it is further

ORDERED that defendants may depose Dr. Andrulis at any time prior to the commencement of trial, but only regarding his proposed rebuttal testimony on the statistics issue.

COX v. CONRAIL

U.S. District Court,
District of Columbia

COX v. CONSOLIDATED RAIL CORPORATION; FRAZIER, et al. v. Same and UNITED TRANSPORTATION UNION(AE). Nos. 83-0514 and 85-0845. August 26, 1987

CIVIL RIGHTS ACTS OF 1866 AND 1964

1. Evidence ▸108.8101

Evidence of discrimination that relates only to railroad's predecessors and that is, most recently, several decades old deserves little weight, given drastic change in values and practices since then.

2. Standing ▸108.7453

Civil rights organization whose purpose is to combat racial discrimination has standing to sue employer and union with respect to racial discrimination, but it lacks standing to challenge alleged sex discrimination, as such challenge is not germane to its purpose.

CIVIL RIGHTS ACT OF 1964

3. Party not named in charge ▸108.7412

Union that was not named in EEOC charges may not be sued under Title VII, even though employer was named in charges, where union was not involved in EEOC investigation or conciliation proceedings, and charging parties were represented by counsel.

CIVIL RIGHTS ACT OF 1866

4. State statute of limitations ▸108.6921

District of Columbia's three-year statute of limitations does not bar action under 42 U.S.C. §1981 by former employee whose claim arguably arose outside three-year period when he first failed equipment examination or when his request to restart training program was denied, where it would appear that his claim accrued when, within three-year period, he was discharged.

5. State statute of limitations ▸108.6921

Former employees' action under 42 U.S.C. §1981 is not barred by Pennsylvania's two-year personal-injury statute of limitations, where they brought action at time when settled law provided six-year limitations period.

CIVIL RIGHTS ACTS OF 1866 AND 1964

6. Race — Promotion ▸108.3178 ▸108.73344

Five black employees' failure to show that they were qualified to be promoted to locomotive engineer bars them from establishing prima facie

Federal Trade Commission

GUIDES FOR THE JEWELRY INDUSTRY

16 CFR Part 23

February 27, 1979

NOTE: Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. Failure to comply with the guides may result in corrective action by the Commission under applicable statutory provisions. Guides may relate to a practice common to many industries or to specific practices of a particular industry.

16 CFR Part 17, Application of Guides in Preventing Unlawful Practices, 44 FR 11176, February 27, 1979.

PART 23—GUIDES FOR THE JEWELRY INDUSTRY

Section

23.0 Definitions.
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23.8 Additional requirements relating to quality marks.
23.9 Misuse of word "diamond."
23.10 Misuse of word "perfect," etc.
23.11 Misuse of term "blue white."
23.12 Misuse of the term "properly cut," etc.
23.13 Misuse of the words "brilliant" and "full cut."
23.14 Misuse of the term "clean," etc.
23.15 Misuse of the word "pearl."
23.16 Misuse of terms "cultured pearl," "cultivated pearl," "seed pearl," "Oriental pearl," "Oriental," "natura," and "kultured."
23.17 Misrepresentation as to cultured pearls.
23.18 Deception as to precious and semiprecious stones.
23.19 Misuse of words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," etc.
23.20 Misuse of words "real," "genuine," "natural," etc.
23.21 Misuse of words "gem," "reproduction," "replica," "synthetic," etc.

Appendix—Listing and classification of guides for convenient reference by industry members.

AUTHORITY: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.
SOURCE: 44 FR 11185, February 27, 1979 unless otherwise noted.

§ 23.0 Definitions.

As used in the guides in this part, the terms hereinafter set forth shall be understood to have the following meanings:

Diamond. A diamond is a natural mineral consisting essentially of pure carbon crystalized in the isometric system and is found in many colors. Its hardness is 10; its specific gravity approximately 3.52; and it has a refractive index of 2.42.

Pearl. A calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk consequent on the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by man.

Cultured pearl. The composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by man inside the shell or in

the mantle of a mollusk is coated with nacre by the mollusk.

Imitation pearl. A manufactured product composed of any material or materials which simulates in appearance a pearl or cultured pearl.

§ 23.1 Deception (general).

(a) It is an unfair trade practice for an industry member to sell or offer for sale any industry product under any representation, description, circumstance, or condition having the capacity and tendency or effect of deceiving purchasers or prospective purchasers thereof as to the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, substance, durability, serviceability, origin, price, value, preparation, production, manufacture or distribution of such industry product or which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in any other material respect.

(b) The inhibitions of this section are applicable to all forms of advertising, whether in periodicals, on the radio or television, and whether written or oral, and to any form of marking or labeling of products or their containers. [Guide 1]

§ 23.2 Misleading illustrations.

It is an unfair trade practice, in connection with the offering for sale, sale, or distribution of industry products, to use, as part of any packaging material, label, advertisement, or other sales promotion matter, any visual representation, picture, illustration, diagram or other depiction which, either alone or in conjunction with any accompanying words or phrases, has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character substance, durability, serviceability, origin, preparation, production, manufacture, or distribution of any industry product, or which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in any material respect.

NOTE: Among practices inhibited by this section are illustrations and depictions of diamonds in greater than actual size without a clear and conspicuous disclosure of the fact that the illustrations or depictions are enlargements, when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers or prospective purchasers of such diamonds or any products containing same. [Guide 2]

§ 23.3 Misrepresentation as to origin and disclosure of foreign origin.

(a) It is an unfair trade practice to misrepresent the place of origin, production, or manufacture of industry products or their components.

(b) It is an unfair trade practice to offer for sale, sell, or distribute any industry product manufactured or produced in a foreign country, or any industry product containing a part or parts manufactured or produced in a foreign country, without affirmatively and clearly disclosing thereon, or in immediate conjunction therewith, by a truthful and nondeceptive mark, stamp, brand, or label, the country of origin of such product or part, where failure to so disclose the country of origin has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in any material respect.

NOTE: Nothing in paragraph (b) of this section shall be construed as requiring disclosure as to the foreign origin of such small and primarily functional parts as rivets, screws, bolts, washers, springs, spring bars and spring rings; or as to the foreign origin of pearls, cultured pearls, diamonds, or any other precious or semi-precious stones, or glass insets which imitate precious or semi-precious stones, when same are primarily obtained from sources outside the United States and its territories and possessions; or as to the foreign origin of any other part or parts which, by reason of further processing in this country, no longer retain the appearance and essential characteristics possessed by them at the time of their importation. Disclosure of the foreign origin of imitation pearls which have not been subjected to processing in this country to the extent of losing the appearance and essential characteristics possessed by them at the time of their importation must be made though such imitation pearls after importation have been strung and made into necklaces in this country. [Guide 3]

§ 23.4 Misuse of terms "hand-made," "hand-polished," etc.

(a) It is an unfair trade practice to represent, directly or by implication, that any industry product is hand-made or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the construction, shape, design, and finish of each part of each individual product.

NOTE: As used here, "raw materials" include bulk sheet, strip, wire, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.

(b) It is an unfair trade practice to represent, directly or by implication, that any industry product is hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed, unless the operation described was accomplished by hand labor and manually controlled methods which permit the maker to control and vary the type, amount, and effect of such operation on each part of each individual product. [Guide 4].

§ 23.5 Misrepresentation as to gold content.

(a) It is an unfair trade practice to sell or offer for sale any industry product under any trade or product name or designation or other representation having the capacity and tendency or effect of deceiving purchasers or prospective purchasers thereof as to the presence of gold or gold alloy in

the product, or as to the quantity or fineness of gold alloy contained in the product, or as to the fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of any industry product or part thereof.

(b) The following practices are among those to be regarded as inhibited by paragraph (a) of this section:

(1) Use of the unqualified word "Gold," or any abbreviation thereof, as descriptive of any industry product, or part thereof, which is not composed throughout of fine (24 karat) gold.

(2) Use of the word "Gold," or any abbreviation thereof, as descriptive of any industry product, or part thereof, which is composed throughout of an alloy of gold, unless a correct designation of the karat fineness of the alloy immediately precedes the word "Gold," or abbreviation thereof, and such fineness designation is of at least equal conspicuousness therewith.

(3) Use of the word "Gold," or any abbreviation thereof, as descriptive of any industry product, or part thereof, which is not composed throughout of gold or gold alloy, but is surface-plated or coated with gold alloy, unless the word "Gold," or abbreviation thereof, is so qualified as adequately and nondeceptively to disclose that the product or part is but surface-plated or coated with an alloy of gold; and, when such plating has been mechanically applied, unless such word "Gold," or abbreviation thereof, is immediately preceded by a correct designation of the karat fineness of the alloy and such fineness designation is of at least equal conspicuousness therewith.

NOTE: See acceptable forms of markings and descriptions for such products set out in paragraph (c) (2) of this section.

(4) Use of the terms "Gold Filled," "Rolled Gold Plate," "Rolled Gold Plated," "Gold Overlay," "Gold Plated," or "Gold Plate," as descriptive of any industry product or part thereof, unless such product or part contains a surface-plating of gold alloy applied by a mechanical process which is of such thickness and extent of surface coverage that use of the term as descriptive of the product or part will not have the capacity and tendency of deceiving purchasers or prospective purchasers, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy and such designation is of at least equal conspicuousness as the term used.

NOTE: See acceptable forms of markings and descriptions for such products set out in paragraph (c) (2) of this section.

(5) Use of the term "Gold Electroplate," or "Gold Electroplated," as descriptive of any industry product or part thereof, unless such product or part is plated or coated with gold or a gold alloy and such plating or

coating is of such karat fineness, thickness, and extent of surface coverage that the use of the term will not have the capacity and tendency of deceiving purchasers or prospective purchasers.

NOTE: See acceptable forms of markings and descriptions for such products set out in paragraph (c)(3) of this section.

(6) Representing, directly or by implication, by use of any name, terminology, or otherwise, that an industry product is equal or superior to, or different than, a known and established type of industry product with reference to its gold content or method of manufacture, unless the representation is true in fact (namely, that it is equal or superior to or different than the established type in the respects represented or implied).

NOTE: Requirements for use of the word "Gold," or any abbreviation thereof, as above set forth, are applicable to "Dura-gold," "Diragold," "Noblegold," "Goldine," or any words or terms of similar import.

NOTE: See also § 23.8 entitled "Additional requirements relating to quality marks."

(7) Use of the word "Gold," or any abbreviation thereof, as descriptive of any industry product, or part thereof, which is composed throughout of an alloy of gold of less than 10 karat fineness.

(c) Markings and descriptions of industry products or parts thereof will be considered as meeting the requirements of this section when in conformity with the following:

(1) An industry product or part thereof composed throughout of an alloy of gold of not less than 10 karat fineness may be marked and described as "Gold" when such word "Gold," whether appearing, is immediately proceded by a correct designation of the karat fineness of the alloy and such karat designation is of equal conspicuousness as the word "Gold," (as, for example, "14 Karat Gold," and "14 K. Gold," and "14 Kt. Gold"). Such product may also be marked and described by a designation of the karat fineness of the gold alloy unaccompanied by the word "Gold" (as, for example, "14 Karat," "14 Kt.," and "14 K.").

NOTE: When the word "Gold," or any abbreviation thereof, is used as descriptive of any product or part of a product which is composed throughout of gold alloy but contains a concealed hollow center or interior, the term or its abbreviation shall also be immediately accompanied by a disclosure of the fact that the product or part contains a hollow center or interior (as, for example, "14 Karat Gold-Hollow Center," and "14 K. Gold Tubing," when of a gold alloy tubing of such a karat fineness), when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers or prospective purchasers. Such products must not be marked or described as "solid" or as being solidly of gold or of a gold alloy. For example, though the composition of such product is 14 karat gold alloy, it shall not be described or marked as either "14 Kt. Solid Gold" or as "Solid 14 Kt. Gold."

(2) An industry product or part thereof on which there has been affixed on all significant surfaces, by soldering, brazing, welding, or other

mechanical means, a plating of gold alloy of not less than 10 karat fineness which is of substantial thickness,[1] may be marked or described as "Gold Filled," "Gold Plate," "Gold Plated," "Gold Overlay," "Rolled Gold Plate," or adequate abbreviations thereof, when such plating constitutes at least 1/20th of the weight of the metal in the entire article, and when the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (as, for example, "14 Kt. Gold Filled," "14 Kt. G.F.," "14 Kt. Gold Plated," "14 Kt. G.P.," and "14 Kt. Gold Overlay"). When conforming to all such requirements except the specified minimum of 1/20th of the weight of the metal in the entire article, the terms "Gold Plate," "Gold Plated," "Rolled Gold Plate," and "Gold Overlay" may be used when the karat fineness designation is immediately preceded by a fraction which accurately discloses the portion of the weight of the metal in the entire article accounted for by the plating, and when such fraction is of equal conspicuousness as the term used (as, for example, "1/40 12 Kt. Rolled Gold Plate," and "1/40 12 Kt. R.G.P.").

(3) An industry product or part thereof, all significant surfaces on which there has been affixed by an electrolytic process a coating or plating of gold, or of a gold alloy of not less than 10 karat fineness, the minimum thickness throughout of which is equivalent to 7/1,000,000ths of an inch of fine gold, may be marked or described as "Gold Electroplate," or "Gold Electroplated." When the coating or plating meets the minimum fineness, but not the minimum thickness, above specified, the marking or description may be "Gold Flashed" or "Gold Washed," and when of the minimum fineness above specified and of a minimum thickness throughout which is equivalent to 100/1,000,000ths of an inch of fine gold, the marking or description may be "Heavy Gold Electroplate" or "Heavy Gold Electroplated." When coatings or platings qualify for the term "Gold Electroplate" (or "Gold Electroplated"), or the term "Heavy Gold Electroplate" (or "Heavy Gold Electroplated"), and have been applied by use of a special kind of electrolytic process, the designation for which the coating or plating is qualified may be accompanied by an identification of the process used, as for example, "Gold Electroplated (X Process)"; "Heavy Gold Electroplated (Y Process)."

(d) The requirements of this section relating to markings and descriptions of industry products and parts thereof are subject to the tolerances applicable thereto under the National Stamping Act (15 U.S.Code, sections 294, *et seq.*) and to the exemptions applicable thereto under section 10 of Commercial Standard CS67-38, relating to marking articles made of karat gold, and under section 12(a) of Commercial Standard CS 47-34 (in-

[1] As here used, the term "substantial thickness" is to be construed as requiring that all areas of the plating be of such thickness as to assure of a durable coverage of the base metal to which it has been affixed. Since industry products embrace items having surfaces and parts of surfaces which are subject to different degrees of wear, this requirement of substantial thickness may not necessitate uniformity of thickness of plating for all items or for different areas of the surface or surfaces of individual items.

cluding supplement thereof effective February 25, 1939), relating to marking of gold filled and rolled gold plate articles other than watch cases.

(e) The exemption provisions of Commercial Standard CS 67—38, mentioned in paragraph (d) of this section, are as follows:

10. Exemptions recognized in the jewelry trade and not to be considered in any assay for quality include springs, posts, and separable backs of lapel buttons, posts and nuts for attaching interchangeable ornaments, and wire pegs or rivets used for applying mountings and other ornaments, which mountings or ornaments shall be of the quality marked.

(f) The exemption provisions of Commercial Standard CS 47—34, mentioned in paragraph (d) of this section, are as follows:

12(a). Exemptions recognized in the jewelry trade and not to be considered in any assay for quality include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., field pieces and bezels for lockets, posts and separate backs of lapel buttons, springs, and metallic parts completely and permanently encased in a nonmetallic covering. Field pieces of lockets are those inner portions used as frames between the inside edges of the locket and the spaces for holding pictures. Bezels are the separable inner metal rings used to hold the pictures in place. [Guide 5].

§ 23.6 Misrepresentation as to silver content.

(a) It is an unfair trade practice to misrepresent in any way the silver content or fineness of silver content of any industry product, or to represent such product as having a silver content, plating, electroplating, or coating, when such is not the fact.[1]

(b) It is an unfair trade practice to mark, describe, or otherwise represent, any industry product, or part thereof, as "silver," "solid silver," "Sterling," or "Sterling Silver," unless it is at least 925/1,000ths pure silver.

(c) It is an unfair trade practice to mark, describe, or otherwise represent, any industry product, or part thereof, as "coin" or "coin silver," unless it is at least 900/1,000ths pure silver.

(d) It is an unfair trade practice to apply the term "Sterling" or "coin," either alone or in conjunction with any other word or words, in any manner to a silver-plated article or to the plating thereon.

(e) It is an unfair trade practice to mark, describe, or otherwise represent, any industry product, or part thereof, as being plated or coated with silver, unless all significant surfaces of the product or part contain a plating or coating of silver which is of substantial thickness.

NOTE: See also § 23.8 entitled "Additional requirements relating to quality marks." [Guide 6]

[1] The requirements of this section relating to markings and descriptions of industry products and parts thereof are subject to the tolerances applicable thereto under the National Stamping Act (15 U.S. Code, section 294, *et seq.*) and to the exemptions applicable thereto under section 8 of Commercial Standard CS 118-44 (Marking of Jewelry and Novelties of Silver).

(footnote continued on next page)

§ 23.7 Misuse of words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."

It is an unfair trade practice to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, as a marking on, or as descriptive of, any industry product or part thereof, under any circumstances or conditions having the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the true composition of such product or part.

NOTE: Commercial Standard CS 66-38, issued by the National Bureau of Standards of the U.S. Department of Commerce, covers the marking of articles made wholly or in part of platinum. Markings on industry products which are in compliance with the requirements of CS 66-38 will be regarded as among those fulfilling the requirements relating thereto which are contained in this section.

NOTE: See also § 23.8 entitled "Additional requirements relating to quality marks." [Guide 7]

§ 23.8 Additional requirements relating to quality marks.

As used in this section, the term "quality mark" means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, which has been stamped, embossed, inscribed, or otherwise placed, on any industry product and which indicates or suggests that any such product is composed throughout of any precious metal or any alloy thereof or has a surface or surfaces on which there has been plated or deposited any precious metal or alloy thereof. Included are the words "gold," "karat," "carat," "silver," "sterling," "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviation thereof, whether used alone or in conjunction with the word "filled," "plated," "overlay," "electroplated," or any abbreviation thereof. Requirements of this section are additional to those provided for in §§ 23.5, 23.6, and 23.7.

(a) *Deception as to applicability of marks.* (1) It is an unfair trade practice to sell, offer for sale, or distribute any industry product on which a

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(Sentence continued from previous page)

and section 8(a) of Commercial Standard CS 51-33 (Marking Articles Made of Silver in Combination with Gold).

The exemption provisions of Commercial Standard CS 118-44, above mentioned, are as follows:

8. Exemptions: The only exemptions recognized and not to be included in any assay for quality include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems of badges, brooches, emblem pins, hat pins, and scarf pins; levers for belt buckles; and blades and skeletons of pocket knives.

The exemption provisions of Commercial Standard CS 51-33, above mentioned, are as follows:

8(a). Unless otherwise required by the National Stamping Act, exemptions recognized in the jewelry trade and not to be considered in any assay for quality include jewels, watches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

quality mark appears when by reason of the location of such mark, the failure to conjunctively identify the part or portion of the product to which same is applicable (or part or portion to which same is applicable), or otherwise, such mark has the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the metallic composition of the product or any part thereof.

(2) When a quality mark has proper application but to one or more parts of an industry product and not to another part or parts thereof which are of similar surface appearance, each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.

(b) *Deception by reason of difference in size of letters or words in a marking or markings.* It is an unfair trade practice to sell, offer for sale, or distribute any industry product on which there appears a quality mark in which words or letters appear in greater size than other words or letters of the marking, or when different markings placed on the product had different applications and are in different sizes, when any such marking has the capacity, tendency, or effect of deceiving purchasers or prospective purchasers of the product as to the metallic composition of such product or any part thereof. (An example of improper marking subject to the inhibitions of this paragraph would be the marking of a gold electroplated product with the word "electroplate" in small type and the word "gold" in larger type, with the result that purchasers and prospective purchasers of the product would observe the word "gold" of the marking and unlikely observe the word "electroplate".)

NOTE: *Legibility of markings.* Quality markings on industry products should be of sufficient size type as to be legible to persons of normal vision, and be so placed as likely to be observed by purchasers or prospective purchasers thereof. When such size marking cannot be achieved without injury to the appearance of the article, a tag or label on which the marking appears in type which is readible by persons of normal vision should be attached to the product and remain thereon until consumer purchase.

NOTE: *Disclosure of identity of manufacturers, processors, or distributors.* It is the consensus of the members of this industry that all quality markings on industry products should be accompanied by the name, or other adequate identification, of the manufacturer, processor, or distributor responsible for such marking. Quality markings include those in which the words or terms "gold," "karat," "silver," "platinum" (or platinum related metals), or their abbreviations, are included, either separately or as suffixes, prefixes, or syllables. [Guide 8]

§ 23.9 Misuse of the word "diamond."

(a) In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice for any industry member to use the unqualified word "diamond" as descriptive of, or as an identification for, any object or product not meeting the requirements specified in the definitions of diamond hereinabove set forth, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

(b) The foregoing provisions of this section have application to the unqualified use of the word "diamond." They are not to be construed as inhibiting:

(1) The use of the words "rough diamond" as descriptive of, or as a designation for, uncut or unfaceted objects or products meeting the requirements specified in the mentioned definition of diamond; or

(2) The use of the word "diamond" as descriptive of, or as a designation for, objects or products meeting the requirements of said definition of diamond but which have not been symmetrically fashioned with at least seventeen (17) polished facets when in immediate conjunction with the word "diamond" there is either a disclosure of the number of facets and shape of the diamond or the name of a type of diamond which denotes shape and which usually has less than seventeen (17) facets (e.g., "rose diamond").

NOTE: Additional requirements relating to imitation and synthetic diamond representaions and misuse of words "reproduction," "replica," "gem," "real," "genuine," "natural," etc., are set forth in §§ 23.19, 23.20 and 23.21. [Guide 9]

§ 23.10 Misuse of word "perfect," etc.

(a) It is an unfair trade practice to use the word "perfect," or any other word, expression, or representation of similar import, as descriptive of any diamond which discloses flaws, cracks, carbon spots, clouds, or other blemishes or imperfections of any sort when examined in normal daylight, or its equivalent, by a trained eye under a ten-power, corrected diamond eye loupe or other equal magnifier.

NOTE: The use, with respect to a stone which is not perfect, of any phrase (such as "commercially perfect") containing the word "perfect" or "perfectly" is regarded as misleading and in violation of this section.

Paragraph (a) of this section shall not be construed as approving the use of the word "perfect," or any word or representation of like import, as descriptive of any diamond that is of inferior color or make.

Nothing in this section is to be construed as inhibiting use of the word "flawless" as descriptive of a diamond which meets the requirements for "perfect" set forth in paragraph (a) of this section.

(b) It is an unfair trade practice, in connection with the offering of any ring or rings or other articles of jewelry having a perfect center stone or stones, and side or supplementary stones which are not of such quality, to use the word "perfect" without clearly disclosing that such description applies only to the center stone or center stones. [Guide 10]

§ 23.11 Misuse of term "blue white."

It is an unfair trade practice to use the term "blue white," or any other term, expression, or representation of similar import, as descriptive of any

diamond which under normal, north daylight or its equivalent, shows any color or any trace of any color other than blue or bluish.

NOTE: For additional requirements respecting artificially colored diamonds, see the note immediately following § 23.18 [Guide 11]

§ 23.12 Misuse of the term "properly cut," etc.

It is an unfair trade practice to use the terms, "properly cut," "proper cut," "modern cut," "well made," or expressions of similar import, to describe any diamond that is lopsided, or so thick or so thin in depth as materially to detract from the brilliance of the stone.

NOTE: This section prohibits the commonly called "fisheye" or "old mine" stone from being offered as "properly cut," "modern cut," etc. [Guide 12]

§ 23.13 Misuse of the words "brilliant" and "full cut."

It is an unfair trade practice to use the unqualified expressions "brilliant," "brilliant cut," or "full cut" to describe, identify, or refer to any diamond except a round diamond which has at least thirty-two facets plus the table above the girdle and at least twenty-four facets below.

NOTE: Such terms should not be applied to single or rose-cut diamonds, either with or without qualification. They may be applied to emerald- (rectangular) cut, pear-shaped, heart-shaped, oval-shaped, and marquise- (pointed oval) cut diamonds meeting the above-stated facet requirements when, in immediate conjunction with the term used, disclosure is made of the fact that the diamond is of such form. [Guide 13]

§ 23.14 Misuse of term "clean," etc.

It is an unfair trade practice to use the term "clean," "eye clean," "commercially clean," "commercially white," or any other term, expression, or representation of similar import, in advertising, labeling, representing, or describing any diamond, when such terms are used for the purpose, or with the capacity and tendency or effect, of misleading or deceiving purchasers, prospective purchasers, or the consuming public. [Guide 14]

§ 23.15 Misuse of the word "pearl."

(a) It is an unfair trade practice to use the unqualified word "pearl," or any other word or phrase of like meaning or connotation, to describe, identify, or refer to any object or product which is not in fact a pearl as defined hereinabove.

(b) It is an unfair trade practice to use the word "pearl" to describe, identify, or refer to a cultured pearl unless it is immediately preceded, with equal conspicuity, by the word "cultured" or "cultivated," or by some

other word or phrase of like meaning and connotation, so as to indicate definitely and clearly that the product is not a pearl.

(c) It is an unfair trade practice to use the word "pearl" to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuity, by the word "imitation" or "simulated," or by some other word or phrase of like meaning and connotation, so as to indicate definitely and clearly that the product is not a pearl.

NOTE: The placing of an asterisk next to the word "pearl," which asterisk makes reference to a footnote explanation of the fact that the product is an imitation or cultured pearl, is not regarded as compliance with the requirements of this section. [Guide 15]

§ 23.16 Misuse of terms "cultured pearl," "cultivated pearl," "seed pearl," "Oriental pearl," "Oriental," "natura," and "kultured."

(a) It is an unfair trade practice to use the term "cultured pearl," "cultivated pearl," or any other word, term, or phrase of like meaning or connotation, to describe, identify, or refer to any imitation pearl.

(b) It is an unfair trade practice to use the term "seed pearl," or any word, term or phrase of like meaning or connotation, to describe, identify, or refer to any cultured pearl or imitation pearl.

(c) It is an unfair trade practice to use the term "Oriental pearl," or any word, term, or phrase of like meaning or connotation, to describe, identify, or refer to any product of the industry other than a pearl taken from a salt water mollusk and of the distinctive appearance and type of pearls obtained from mollusks inhabitating the Persian Gulf and recognized in the jewelry trade as Oriental pearls.

(d) It is an unfair trade practice to use the word "Oriental" to describe, identify, or refer to any cultured or imitation pearl.

(e) It is an unfair trade practice to use the word "natura," or any other word, term, or phrase of like meaning or connotation, to describe, identify, or refer to a cultured or imitation pearl.

(f) It is an unfair trade practice to use the word "kultured," or any other word, term, or phrase of like meaning or connotation, to describe, identify, or refer to an imitation pearl. [Guide 16]

§ 23.17 Misrepresentation as to cultured pearls.

It is an unfair trade practice, in connection with the distribution, sale, or offering for sale of industry products, to make, publish, or disseminate, or cause to be made, published, or disseminated, any false, misleading, or deceptive statement, representation, or illustration concerning the matter in which cultured pearls are produced, the size of the nucleus artificially inserted in the oyster and included in cultured pearls, the length of time that such products remained in the oyster, the thickness of the nacre

coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls or concerning any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

NOTE: Additional requirements relating to misuse of words "real," "genuine," "natural," "reproduction," "replica," "synthetic," "gems," etc., are set forth in §§ 23.20 and 23.21. [Guide 17]

§ 23.18 Deception as to precious and semi-precious stones.

It is an unfair trade practice, in connection with the offering for sale, sale, or distribution of precious or semi-precious gem stones, to use or cause or promote the use of any trade promotional literature, advertising matter, mark, brand, label, trade name, picture, design or device, or other type of oral or written representation, however disseminated or published, which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in any other material respect.

NOTE: One of the practices to be considered as inhibited by this section is as follows: The sale, or offering for sale, of any diamond or other natural precious or semi-precious stone which has been artificially colored or tinted by coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means, without disclosure of the fact that such natural stone is colored, and disclose that such artificial coloring or tinting is not permanent if such is the fact. [Guide 18]

§ 23.19 Misuse of words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," etc.

(a) It is an unfair trade practice to use the unqualified words "ruby," "sapphire," "emerald," "topaz," or the name of any other precious or semi-precious stone, as descriptive of any product which is not in fact a natural stone of the type described.

(b) It is an unfair trade practice to use the words "ruby," "sapphire," "emerald," "stone," "birthstone," or the name of any other precious or semi-precious stone, as descriptive of a synthetic stone or an imitation or simulated stone unless such word or name is immediately preceded, with equal conspicuity, by the word "synthetic," or by the word "imitation" or "simulated," whichever is applicable, or by some other word or phrase of like meaning, so as clearly to disclose the nature of such product and the fact that it is not a natural stone.

NOTE: The placing of an asterisk next to the word "stone" or "birthstone," or the name of any natural stone referring to a footnote explanation that the product is a synthetic or imitation is not to be regarded as compliance with the requirements of this section. [Guide 19]

§ 23.20 Misuse of words "real," "genuine," "natural," etc.

It is an unfair trade practice to use the words "real," "genuine,"

"natural," or similar terms, as descriptive of any article or articles which are manufactured or produced synthetically or artificially, or artificially cultured or cultivated, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public. [Guide 20]

§ 23.21 Misuse of words "gem," "reproduction," "replica," "synthetic," etc.

(a) It is an unfair trade practice to use the word "gem" or similar terms to describe, identify, or refer to a pearl, cultured pearl, diamond, ruby, sapphire, emerald, topaz, or other product of the industry, which does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

(b) It is an unfair trade practice to use the word "gem" as descriptive of any synthetic industry product unless the product meets the requirements of paragraph (a) of this section and unless such word is immediately accompanied, with equal conspicuity, by the word "synthetic," or by some other word or phrase of like meaning, so as clearly to disclose the fact that it is not a natural gem.

NOTE: Use of the word "gem" with respect to cultured pearls and synthetic stones should be avoided since few cultured pearls or synthetic stones possess the necessary qualifications to properly be termed "gems." Imitation pearls, imitation diamonds, and other imitation stones cannot be described as "gems" under any circumstances. Not all diamonds or natural stones, including those classified as precious stones, possess the necessary qualifications to properly be termed "gems."

(c) It is an unfair trade practice to use the words "reproduction," "replica," or similar terms, to describe, identify, or refer to a cultured or imitation pearl, or to any imitation of precious or semi-precious stones.

(d) It is an unfair trade practice to use the word "synthetic" as descriptive of cultured or imitation pearls, or to use the word "synthetic" with the name of any natural stone as descriptive of any industry product, unless such industry product has essentially the same optical, physical, and chemical properties as the stone named. [Guide 21]

Appendix—Listing and Classification of Guides for Convenient Reference by Industry Members.

Category I. Guides in this part having application to all industry products regardless of their composition:

Sec.

23.1 Deception (general).
23.2 Misleading illustrations.
23.3 Misrepresentation as to origin and disclosure of foreign origin.

23.4 Misuse of terms "hand-made," "hand-polished," etc

Category II. Guides in this part having application to industry products composed in whole or in part of a precious metal or metals:

Sec.
23.5 Misrepresentation as to gold content.
23.6 Misrepresentation as to silver content.
23.7 Misuse of words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."
23.8 Additional requirements relating to quality marks.

Category III. Guides in this part having application to industry products containing diamonds or imitations thereof.

Sec.
23.9 Misuse of the word "diamond."
23.10 Misuse of word "perfect," etc.
23.11 Misuse of term "blue white."
23.12 Misuse of the term "properly cut," etc.
23.13 Misuse of the words "brilliant" and "full cut."
23.14 Misuse of the term "clean," etc.

NOTE: These guides also have application to diamonds which are sold in the loose and unset state.

Category IV. Guides in this part having application to industry products containing pearls, cultured pearls, or imitations thereof:

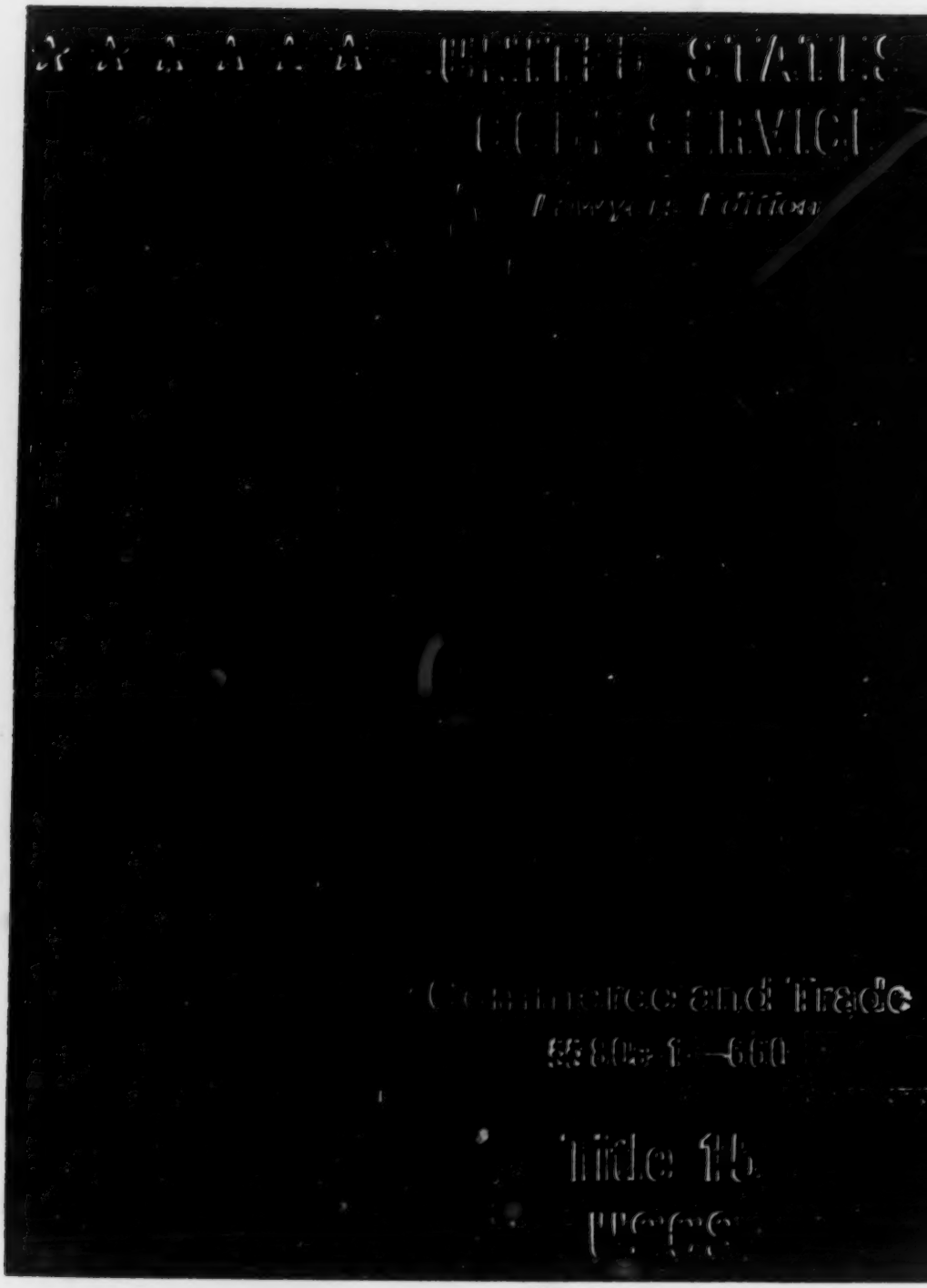
Sec.
23.15 Misuse of the word "pearl."
23.16 Misuse of terms "cultured pearl," "cultivated pearl," "seed pearl," "Oriental pearl," "Oriental," "natura," and "kultured."
23.17 Misrepresentation as to cultured pearls.

NOTE: These guides also have application to pearls, cultured pearls, and imitation pearls sold in loose (unstrung and unset) state.

Category V. Guides in this part having application to industry products containing rubies, sapphires, and emeralds and other precious or semi-precious stones, and synthetic and imitation stones:

Sec.
23.18 Deception as to precious and semi-precious stones.
23.19 Misuse of words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," etc.
23.20 Misuse of words "real," "genuine," "natural," etc.
23.21 Misuse of words "gem," "reproduction," "replica," "synthetic," etc.

NOTE: Industry products covered by the guides in Categories II through V are also subject to the guides in Category I.


UNITED STATES
CODE SERVICE
Lawyers Edition
Commerce and Trade
Title 15
USCS

§ 294. Importation or transportation of falsely marked gold or silver ware prohibited.

It shall be unlawful for any person, firm, corporation, or association, being a manufacturer of or wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, or for any officer, manager, director, or agent of such firm, corporation, or association to import or export or cause to be imported into or exported from the United States for the purpose of selling or disposing of the same, or to deposit or cause to be deposited in the United States mails for transmission thereby, or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States, or the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, or to transport or cause to be transported from one State, Territory, or possession of the United States, or from the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, any article of merchandise manufactured after the date when this Act takes effect and made in whole or in part of gold or silver, or any alloy of either of said metals, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in sections two and three of this Act [15 USCS §§ 295, 296].
(June 13, 1906, ch 3289, § 1, 34 Stat. 260.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"The date when this Act takes effect", referred to in this section, is probably intended to be a reference to the effective date of Act June 13, 1906, ch 3289, 34 Stat. 262, which is effective 1 year after the date of its enactment on June 13, 1906, as provided by § 8 of such Act.

Explanatory notes:
Act June 13, 1906, ch 3289 34 Stat. 260, which appears as 15 USCS §§ 294 et seq., is commonly known as the "Jewelers' Liability Act (Gold and Silver Articles)".

Effective date of section:
This section is effective 1 year after the date of enactment of Act June 13, 1906, ch 3289, 34 Stat. 260, on June 13, 1906, as provided by § 8 of such Act.

Short titles:
Act Oct. 1, 1976, P. L. 94-450, § 1, 90 Stat. 1501, provided: "This Act may be cited as the 'Gold Labeling Act of 1976'." For full classification of this Act, consult USCS Tables volumes.

— CODE OF FEDERAL REGULATIONS

United States Customs Service, packing and stamping; marking, 19 CFR Part 11.

CROSS REFERENCES

Penalty for violating provisions of 15 USCS § 294, 15 USCS § 298.
Article of merchandise defined, 15 USCS § 299.
This section is referred to in 15 USCS §§ 295, 296, 297, 298, 299, 300.

RESEARCH GUIDE

Federal Procedure L Ed:
Criminal Procedure, Fed Proc, L Ed, § 22:56.

Am Jur:
55 Am Jur 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 881.

§ 295. Standard of fineness of gold articles; deviation

In the case of articles of merchandise made in whole or in part of gold or of any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in the preceding section [15 USCS § 294], the actual fineness of such gold or alloy shall not be less by more than three one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed: Provided, That in any test for the ascertainment of the fineness of any article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article: Provided further, That, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold or of its alloys contained in an article mentioned in this section, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than three one-thousandth parts, in the case of a watchcase or flatware, or than seven one-thousandth parts, in the case of any other such article, than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or

PART 779-THE FAIR LABOR STANDARDS ACT AS APPLIED TO RETAILERS OF GOODS OR SERVICES

(This publication conforms to the code of Federal Regulations as of Oct. 11, 1974 , the date that this reprint was authorized)

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage And Hour Division
Washington, D.C. 20210

§ 779.213 What is a common business purpose.

Generally, the term "common business purpose" will encompass activities, whether performed by one person or by more than one person, or corporation, or other business organization, which are directed to the same business objective or to similar objectives in which the group has an interest. The scope of the term "enterprise" encompasses a single business entity as well as a unified business system which performs related activities for a common business purpose. What is a "common business purpose" in any particular case involves a practical judgment based on the facts in the light of the statutory provisions and the legislative intent. The answer ordinarily will be readily apparent from the facts. The facts may show that the activities are related to a single business objective or that they are so operated or controlled as to form a part of a unified business system which is directed to a single business objective. In such cases, it will follow that they are performed for a common business purpose. Where, however, the facts show that the activities are not performed as a part of such enterprise but for an entirely separate and unrelated business, they will be considered performed for a different business purpose and will not be a part of that enterprise. The application of these principles is considered in more detail in Part 776 of this chapter.

§ 779.241 Selling.

The statutory definition of the term "sale" or "sell" is quoted in § 779.15. As long as the employee in any way participates in the sale of the goods he will be considered to be "selling" the goods, whether he physically handles them or not. Thus, if the employee performs any work that, in a practical sense is an essential part of consummating the "sale" of the particular goods, he will be considered to be "selling" the goods. "Selling" goods, under section 3(s) has reference only to goods which "have been moved in or produced for commerce by any person," as discussed in §§ 779.242 and 779.243.

§ 779.305 Separate establishments on the same premises.

Although, as stated in the preceding section, two or more departments of a business may constitute a single establishment, two or more physically separated portions of a business though located on the same premises, and even under the same roof in some circumstances may constitute more than one establishment for purposes of the exemptions. In order to effect such a result physical separation is a prerequisite. In addition, the physically separated portions of the business also must be engaged in operations which are functionally separated from each other. Since there is no such functional separation between activities of selling goods or services at retail, the Act recognizes that food service activities of such retail or service establishments as drugstores, department stores, and bowling alleys are not performed by a separate establishment which "is" a "restaurant" so as to qualify for the overtime exemption provided in section 13(b)(8) and accordingly provides a separate overtime exemption in section 13(b)(18) for employees employed by any "retail or service establishment" in such activities in order to equalize the application of the Act between restaurant establishments and retail or service establishments of other kinds which frequently compete with them for customers and labor. (See Sen. Rept. 1487, 89th Cong. first session, p. 32.) For retailing and other functionally unrelated activities performed on the same premises to be considered as performed in separate establishments, a distinct physical place of business engaged in each category of activities must be identifiable. The retail portion of the business

must be distinct and separate from and unrelated to that portion of the business devoted to other activities. For example, a firm may engage in selling groceries at retail and at the same place of business be engaged in an unrelated activity, such as the incubation of chicks for sale to growers. The retail grocery portion of the business could be considered as a separate establishment for purposes of the exemption, if it is physically segregated from the hatchery and has separate employees and separate records. In other words, the retail portion of an establishment would be considered a separate establishment from the unrelated portion for the purpose of the exemption if (a) it is physically separated from the other activities; and (b) it is functionally operated as a separate unit having separate records, and separate bookkeeping; and (c) there is no interchange of employees between the units. The requirement that there be no interchange of employees between the units does not mean that an employee of one unit may not occasionally, when circumstances require it, render some help in the other units or that one employee of one unit may not be transferred to work in the other unit. The requirement has reference to the indiscriminate use of the employee in both units without regard to the segregated functions of such units.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF WISCONSIN

IRA R. BANKS,
Plaintiff,

v. Civil NO. 87-C-0802

STERLING MERCHANDISE, INC.,

AND
SHAWS JEWELERS,
Defendant.

---

(1).Name and resident of plaintiff
Ira R. Banks
6507 North 84th Street
Milwaukee, WI 53224

(2). Name , residence and occupation of defendant(s)
Sterling Merchandise, Inc.,
1585 Federick Boulevard
Akron, Ohio 44329

(3). Grounds for federal jurisdiction.

Jurisdiction is conferred by 28 U.S.C 1337, 1343, 42 U.S.C. 2000e- 5(f)(1)(3) and 42 U.S.C. 1981.Which provides for jurisdiction in all suits authorized by Title VII of the1964 Civil

Right Act, 42 U.S.C 2000e and as amended by the Equal Employment Opportunity Act of 1972.

PARTIES

(4). Plaintiff Ira R. Banks is a black American and resides within the jurisdiction of this Court and at relevant time was employed by the defendant as a jeweler.

(5). Sterling Merchamdise ,Inc., and Shaws Jewelers. Engaged in business within the Jurisdiction of this Court and is a statutory employer puto the aforsaid statue.

STATEMENT OF CLAIM OF RELIEF

WHEREFORE, Plaintiff Prays;

(1).that this Court order defendant to immedately reinstate plaintiff to position of repair supervisor at cooperate level,, in addition, to grant rectroactive seniority, back and front pay, and additional compensation consistent with his charges of discrimination and the aforesaid statue so that plaintiff is in all respect made whole and properly compensated for the unlawful race employment discrimination.

(2). That this Court hold and find defendant conduct and action in this case was in violation of provision of Title VII of The Civil Right Act of 1964 and as amended by the Equal Employment Opportunity Act of 1972.

(3). That this Court Order defendant to immeadeatly release plaintiff vested $8,771.18 profit sharing now withheld by defendant.

(4). That this court award plaintiff his cost includeing reasonable attorney fees.

(5). That defendant immeadeatly employ an grant promotions of minoritys (blacks) on a permanent full time bases, (If already not employed) on all levels within the parent company an sudsidiary with equal compensation as co-workers. In all areas of defendant organization where ever one member of minority group is not employed on a full time permanent bases.

(6). That this Court award damages (compsatory) in the amount of $ 39,000,00, Plus Quota compensation.

(7). That this Court award plaintiff punitive damages in the amount of $ 34,000,000,00.

(8). That this Court grant plaintiff such other of different relief as may be appropriate under the circumstances of this case as required by law and justice.

Dated at Milwaukee, Wisconsin this 1st day of July 1987.

Ira R. Banks

Ira R. Banks
6507 North 84th Street
Milwaukee, WI 53224

CAUSE OF ACTION

(6). Plaintiff began employment with defendant on or about April 28, 1980.

(7). Plaintiff was generally employed on a full-time permant basis from on or about April 28, 1980 until he was terminated on or about December 15,1986.

(8). On March 12, 1986 plaintiff file a charge of discrimination with The United States Equal Employment Opportunity Commission and Which Charge defendant with unlawful race discrimination, Failing to keep pay raises assurance equal to co-workers, overtime compensation, an quota compensation. set forth in attached Exhibit A which is incorporated herein.

(9). On June 16, 1986 plaintiff file a charge of discrimination with The United States Equal Employment Opportunity Commission ans which charge defendant with retaliation, employment harrassment, an denial of promotion to the position of repair shop supervisor rewarded to a caucasion, set forth

in Exhibit B attached an incorporated an herein.

(10). On December 17, 1986, after his termination on December 15, 1986. Plaintiff file a 3rd charge of retaliatort discharge, continuance racial harressment, change in condition of Employment , racial slurs, verbaly abuse, open animonity, blamed for faulty merchandise sold by the defendant Statement set forth in Exhibit C attached an incorporated inthis complaint.

(11). On May 26 an 27, 1987 The Equal Employment Opportunity Commission issued three (3) "Right To Sue"letters to plaintiff as authorized by the afroesaid statue.

(12). Plainitff was discriminated aganist by defendant maintaining different unequal employment standards with hireing, Fireing, an promotions . Caucasions are given preferental treatments.

(13). Plainitff is discriminated aganist by defendanr even though he is terminated . Plaintiff vested $ 8,771.18 profit sharing was due to plaintiff when terminated ,but is still withheld.Plaintiff Quota compensation withheld because of his race black.

(14). From the time plaintiff was employed by defendant in 1980 until the time of his discharge he was discriminated aganist because of his race on account of the terms, conditions, promotion opportunity denial , privileges of his employment and compensation on account of his race (black) all in violation of 42 U.S.C 1981 section.

(15). Due to the above stated policies, practices and conduct of defendant. The defendant has and did engage in act and practices with respect to his race and terms, condition and privileges of his employment compensation thereto, and defendant thus committed unlawful employment practice as prohibited by afroesaid law as set forth in Exhibit A, B, and C.

(16). The unlawful employment peactices alleged herein were committed within the State of Wisconsin the jurisdiction of this court.

(17). The plaintiff has satisfied the timeliness requirement of Title 42 United States Code Section 2000e-5(e).

(18). As a direct an proximate result of the defendant,s plaintiff suffered lost wages, and promotions, benefits, personal embarrassement , deformation-of-character, innuendos, social status, despair, great mental pain and suffering.

(19). The conduct of the defendant complained of was was intentional and with malice, and in conscious disregard of the plaintiff rights.

(20). Plaintiff has fully exhausted all mandatory administrative remedies under federal and state law.

CHARGE OF DISCRIMINATION

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
EQUAL RIGHTS DIVISION

IRA BANKS
6507 North 84th Street
Milwaukee, Wisconsin 53224
Complainant

vs. ERD Case # 8650513

SHAW,S JEWELERS EEOC Case # 055862545
95 North Moorland Road
Brookfield, Wisconsin 53005
Respondent

Specific Harm You Suffered(Personal Harm)

I an being paid less than the white employees.

Reason Given by Respondent For Discrimintory action

The respondent gave me no reason for this action.

Discrimination Statement.

I was discriminated aganist because of my : race, black, in regard to wages in violation of Wisconsin Statues 111.31-111.395 for the following reasons.

(1). I begin my employment with the respondent in 1980.

ERD # 8650513
EEOC #055862545

(2). In 1984, the respondent changed me from hourly to salary. I was given the title of manager, but not the duties or the money. The respondent informed me that by the end of 1985, I would be at $ 26,000 per year . This did not happen. I make less on salary and work more hours.

(3). When the assistant managers work overtime hours , they are paid for the overtime. I am not.

(4). The respondent has white employees who work less hours than me and they are paid more money than I am. I am required to train white employees who are paid more than me.

(5). I am required to work more hours and i am not paid for those hours. The respondent informed me that i was not a manager, I was just an employee with a title.

(6). I believe that the respondent is discriminating aganist me because of my race, blace in violation of Wisconsin,s Fair Employment Law.

Ira Banks
12th day of March 1986

CHARGE OF DISCRIMINATION

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
EQUAL RIGHTS DIVISION

IRA BANKS
6507 North 84th Street
Milwaukee, Wisconsin 53224
Complaint

vs. ERD Case # 8651264

SHAW,S JEWELERS EEOC Case # 260863368
95 North Moorland Road
Brookfield , Wisconsin 53005
Respondent

Give the most recent date you believe the respondent acted aganist you: May 13, 1986

What did the respondent do that you believe was discriminatory?

I have been harassed by the respondent since filing my charge of discrimination.

I was denied a promotion to the position of repair Supervisor.

Reason given by Respondent for discriminatory Action:

The Respondent has given me no reason for the harrassment.
I do not know why i was not promoted.

ERD Case # 8651264
EEOC Case # 260863368

Discrimination Statement:

I was discriminated aganist because: I filed a previous charge of discrimination aganist the respondent when i was subjected to harrassment in violation of section 111.31 - 111.395, Wisconsin Statues.

I was discriminated aganist because of my race(black) when I was denied a promotion in violation of sections 111.13 and 111.395 of the Wisconsin Statues and because I filed a previous charge aganist the respondent.

1. I began working for the respondent in 1980.

2. On March 12, 1986, I filed a charge of race discrimination aganist the respondent.

3. On May 2, 1986, I received a written counseling report from Greg Winokur. Item # 2 on this report is a matter is outside of my control. The respondent is blaming the repair department for delays

or problems with merchandise when the merchandise itself is defective necessitating a longer repair period.

4. On May 13, 1986, the respondent promoted Robert Cabral to the position of repair shop supervisor. I am qualified for this position.

Ira Banks
Day June 16, 1986

CHARGE OF DISCRIMINATION
EQUAL EMPLOYMENT OPPORTUINTY COMMISSION

IRA R. BANKS
6507 North 84th Street
Milwaukee, Wisconsin 53224
Complainant

vs.

EEOC Case #260870080
ERD Case # 8750054

SHAW,S JEWELERS
95 North Moorland Road
Brookfield Wisconsin 53005

and

STERLING MERCHANDISE , INC
1585 Frederick Boulevard
Akron, OH 44320
Respondent

Cause of discrimination based on:

race , retaliation

Date most recent or continuing discrimination took place: 12 - 15 - 86

EEOC Case # 260870080
ERD Case # 8750054

THE PARTICULARS ARE:

1. On June 16, 1986, I filed a charge of discrimination at EEOC and since i have been retalited aganist with racial harrassment, change in conditions of employment, and discharge from brookfield facility.

2. Greg Winokur , Area Supervisor , stated on a personel Status form that I was " unable to perform job responsibility and duties to the satisfaction of Sterling , Inc."

3. I believe that the respondent has retaliated aganist me on the basis of my haveing filed charge number 260 86 3368 in violation of section 704(a) of Title VII of the Civil Right Act of 1964, as amended , for the following reasons:

A. On December 8, 1986,Greg Winokur , Supervisor caucasian, telephoned me from another store and used racial slurs such as nigger, and lame , within earshot of coworkers and customers.

B. Robert Cabral, Repair Supervisor, Caucasion , did nothing to correct the situation after I told him that customers verbally abused me for mistakes made by my coworkers.

C. I believe that the respondent has made an effort to discredit my work as I have received diplomas from MATC in both watch and jewelry repair.

D. On December 8, 1986, Renee Caldwell , manager of Retail Store , Caucasion, became irate when I did not teach her my skills, which was not my reponsibility .

E. My telephone was removed from my office, and my working condition were made less desirable.

F. Wendy (last name unknown) , Retail manager of Store#33 , Jean Rivers, Retail Manage of Store # 64, both Caucasion, during the course of 1986, verbally harassed me for faulity merchandise sold by the defendant.

Ira R. Banks
Date 12-17-86

AMER CUNNINGHAM BRENNAN
CO., L.P.A.
ATTORNEYS AND COUNSELLORS AT LAW
ELEVENTH FLOOR
FIRST NATIONAL TOWER
AKRON, OHIO 44308
TELEPHONE 216/762-2411
TELECOPIER 216/762-9918

RICHARD T. CUNNINGHAM
DAVID L. BRENNAN
JOSEPH F. COOK
NICHOLAS P. ANDREEFF
JOHN S. STEINHAUER
FRANK A. LETTIERI
PETER D. OLEHAM
ANDREW R. DUFF
ROLAND M. BAUER
JACK MORRISON, JR.
ANN AMER BRENNAN
JAMES E. BECKER
JOHN F. BABNICK
MARY TERESA BOBNOSKY
TIMOTHY M. HANNA
MARY CLARE O'CONNOR
KIMBERLY A. KMENTT

ERNEST L. CUNNINGHAM
(1887-1971)

BERNARD J. AMER
(1888-1983)

July 12, 1986

Katherine Kehoe
Equal Right Officer
STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR
and HUMAN RELATIONS
Milwaukee Office
819 N. 6th Street
Milwaukee, WI 53203

Re: ERD Case # 8650513

Dear Ms. Kehoe:

In response to your additional questions regarding Ira Banks Complaint of Discrimination enclosed are the following documents:

1) Job Description for Jewelry Repair Shop Manager.

2) Job Description for Store Manager.

3) Job Description for Corporate Repair Shop Supervisor.

4) Salary Schedule for Repair Shop Managers and Corporate Goldsmiths.

5) Differences between Management and Hourly Employees.

6) Description of Operations of Repair Shops.

7) Determination of Pay Rate for Repair Shop Managers.

8) Responsibility for Personnel Decisions.

9) Response to remarks allegedly made by Greg Winokor.

10) Clarification of Ira Bank's Counselling Report.

DETERMINATION OF PAY

The pay rate for repair shop managers is determined by the volum of the shop, the number of people supervised, the number of stores serviced, the supply usage, the technical qualifications and experience of the individual and the geographic area in which they are located.

REQUIRED SKILLS AND ABILITIES

A. Techically qualified as master Goldsmith.

B. Ability to motivate others to achieve.

C. Ability to plain and organize work for others.

D. Ability to work independently.

E. Ability to meet deadlines and set priorities.

F. Willingness to communicate praise and criticism as necessary.

G. Reliability and dependability.

H. Effective communication skills.

STORE MANAGERS

REQUIRED SKILLS AND ABILITIES

A. Ability to desplay outstanding sales performance and train and teach by example.

B. Positive, enthusiatic attitude so as to inspire and motivate others to achieve.

C. Ability to plan and organize work.

D. Ability to work independently without immediate supervision.

E. Ability to meet deadlines.

F. ability to plain and organize the work of others.

G. Ability to set priorities.

H. Ability to understand and explain detailed information.

I. Willingness to communicate, praise and criticisem as needed.

J. Reliability and dependability.

K. Ability to talk to, understand and empathize with others.

L. Willingness to accept responsibility, to make decisions and to delegate where appropriate.

M. Ability to motivate,persuade and influence the actions of others

N. Willingness to apply the personal effort and time necessary to attain goals.

STERLING INC.
PROFIT SHARING PLAIN
PARTICIPANT ACCOUNT STATEMENT
FROM 08/01/86 TO 07/31/87

Participant	soc sec num
Ira Banks	429 82 9699

Account Name	Beginning Balance
ER Contrib. Acct.	
ER Contr. Non veste	$8,771.18
TOTAL ACCOUNT	

Account Name	Account Earnings	Ending Balance
ER Contrib. Acct.		
ER Contr. Nonveste		
TOTAL ACCOUNT	$948.73	$9,719.91

STERLING INC.
PROFIT SHARING PLAN

PARTICIPANT ACCOUNT STATEMENT
FROM 08/01/86 TO 07/31/87

PARTICIPANT	SOC SEC NUM
Banks, Ira	429-82-9699

ACCOUNT NAME	BEGINNING BALANCE	CONTRIBUTION TO ACCOUNT	FORFEITURES REALLOCATED	PAYMENTS FROM ACCOUNT
ER Contrib. Acct	5,262.71	.00	.00	.00
ER Contr. Nonveste	3,508.47	.00	.00	.00
TOTAL ACCOUNT	8,771.18	.00	.00	.00

ACCOUNT NAME	ACCOUNT EARNINGS	TRANSFERS TO/FROM ACCT	ENDING BALANCE	VESTED AMOUNT
ER Contrib. Acct	948.73	.00	6,211.44	6,211.44
ER Contr. Nonveste	.00	.00	3,508.47	.00
TOTAL ACCOUNT	948.73	.00	9,719.91	6,211.44

YOUR VESTED PERCENTAGE IS 60%

PERSONNEL STATUS CHANGE FORM

DATE 12-15-86 STORE# 933 EMPLOYEE #_____
EMPLOYEE,S FULL NAME IRA BANKS

NAME OR ADDRESS CHANGE

CLASSIFICATION CHANGE OR TRANSFER FROM/TO

TERMINATIONS
Employee resigned(terminated) circle one for the following reasons

Unable to perform job responsibilities and duties

To the Satisfaction of Sterling Inc.

Charge Balance (if any):_____

Effective Date 12-15-86

COMMENTS

EMPLOYEE,S SIGNATURE _____ DATE _____
MANAGER,S SIGNATURE _____ DATE _____
SUPERVISOR SIGNATURE Greg Winokur DATE 12-15-86

FORM PR-3 (revised)

SHAW,S
Keepsake Jewelers BROOKFIELS SQUARE MALL
95 North Moorland Road, Brookfield
WI 53005
Telephone 414- 782-8100

Mr. Banks did state that he refused to allow his shop personnel to do a repair job for a customer at # 34 because the customer was a chronic complainer and would rather shop # 933 in Akron ,OH. Have the responsibility for the customer,s dissatisfaction. The Customer did agree to have Leslie Panasuck at # 934 who had previous years done work to her satisfaction, however Mr. Banks fordid Leslie to handle the job on a local level even though she was technically competent and were Willing. The customer (job # 16904) did not want Mr. Banks to work on her ring as she was previously dissatisfied with the work perdormed by him. I advised Mr. Banks that our preference as a company was to handle all repair work on a local level as long as we were technically able and had the necessary resources which we did indeed Mr. Banks was told that his comments would be valued on this

counselling report to any degree that he felt was necessary and that his signature as well my own would be necessary to complete this document and put into his personnel file. I also advised Mr. Banks that he was going to receive a copy of everything that we had discussed from the the beginning of our conversation since these were reoccurn,s events that had been previously discuussed Mr.Banks refused to sign or make comments on the counseling session, the employee exhibitted a very nagative attitude toward servicing our customers and even referred to our manager and assistant manager at Store # 33 as "jerks" I felt due to remarks made about the sterling employees and dissatified customer that it was in the best interest of our local stores, customers, and future business growth , to remove Mr. Banks from his position as shop manager at repair shop # 933 located in Brookfield, WI I did also on two occations during this counseling receive testimony from Mark Scholz of # 934 and Renee Caldwell of # 34 Store mgr to establish the truth of the issues due to failure to admit to them by Mr. Banks. Greg Winokur

SHAW'S
Kenosha Jewelers

BROOKFIELD SQUARE MALL
95 NORTH MOORLAND ROAD, BROOKFIELD, WI 53005
TELEPHONE: 414-782-8100

1. Banks did state that he refused to allow
his shop personnel to do a repair job for
customer at #34 because the customer
is a chronic complainer called Gerald Nathe
shop #4133 in Akron, OH. Have the responsibility
the customer's dissatisfaction. The custo
did agree to have Leslie Pomasuck at #934,
he had in previous years done work to her
satisfaction, however Mr. Banks forbid Leslie
to handle the job on a local level even tho
he was technically competent and more
willing. The customer (job #16904) did not wa
Mr Banks to work on her ring as she was
previously dissatisfied with the work
performed by him. I advised Mr Banks
that our performance as a company was to
enable all repair work done at local level as long
as we were technically able to meet the
warranty requirements, which we stated in our

Mr. Banks was told that his comments would be valued on this counselling report to any degree that he felt was necessary, and that his signature as well my own would be necessary to complete this docum and put into his personnel file. I also advised Mrs Banks that he was going to receive a copy of everything that we had discussed from the beginning of our conversation since there were ~~no~~ recent events that had been previously discuss

Mr. Banks refused to sign or make comments on the counseling report as requested. Durin the counseling session, the employee exhibited a very negative attitude toward servicing our customers and even referred to our manage and assistant managers as ~~fools~~ "jerks". I told him due to reminder visits to the Sterling employees and its satisfied custo that it was in the best interest of our [illegible] Mr. Banks [illegible] his [illegible] Shop Manager at Sterling Shop #434 located in Brookfield, WI. I did also [illegible] during this counseling session [illegible] Mark Schelz of #434 and Renee Caldwell of #434, store mgr. to establish the truth of the [illegible] Mr. Banks [illegible]

EMPLOYEE
COUNSELING REPORT

STORE 934 Employee Name Ira Banks shop mgr.
DATE 12-15-86 Counselor Greg Winokur, Dist.

Area(s) Discussed

1. Failure to meet delivery date of repair job #33-18906 #33-18936 without advising store of delays as has been previously counselled.

2. refused to do repair job for customer at store # 34 and not allowing another staff goldsmith to perform work on premises # 34-16940

3. Failure to do work as requested on job envelop # 18930 necessitating comeback delay.

CORRECTIVE ACTION NECESSARY:

1. Advising all store managers of any repair that will not meet delivery date at least 1 day prior to promise date.

2. proper inspection of work leaving shop to insure work indicated on envelop is completely performed.

3. To service Sterling customers on local level where we have the resourse & technical skills necessary to perform the work.

Time period in which Corrective Action is to be completed.

1. Immediate corrective action necessary or dismissal of employee upon reoccurance of any of any of the above incidents.

Employee Comments:

EMPLOYEE

DATE 12-15-86 COUNSELING REPORT

SUPERVISORY COMMENTS: On 12-13-86, job # 33-18936 was returned to # 33 still not properly completed necessitating another employee being sent out of her store to have the job redone by mark sholtz the only goldsmith working, store # 35-9811 promise 12/13 not deliver.

Employee Signature

Supervisor,s Signature

Greg Winokur

COUNSELING REPORT

Store# 934 Employee Name Ira Brooks Shop Mgr

Date 12-13-94 Counselor Casey Winstead, District Supervisor

Area(s) Discussed:

1) Failure to meet delivery date of graphic jobs #33-13, #34-15036 without advising store of delays by 3pm previous day.

2) Failure to file repair job envelopes at store #34 for customer pick-up.

3) Failure to report to supervisor on job knowledge & administrative functions.

Corrective Action Necessary:

1) Delivering job to store according to agreed terms. Will not make delivery date without 1 Day prior notice.

2) Proper completion of work tracking slip - Work is not performed or completed in a timely fashion.

3) To assist Sterling customers on a professional level where we have the technical skills necessary.

Time Period In Which Corrective Action Is To Be Completed:

1) Immediate corrective action necessary. Disciplinary action of employee upon recurrence

2) of any of the above incidents

3)

Employee Comments:

Supervisory Comments: [illegible]

Employee Signature Supervisor's Signature

Manager/Assistant Manager Signature Personnel's Signature

WHAT EVERY SMART DIAMOND BUYER NEEDS TO KNOW

Because every diamond is unique you need to consider the 4Cs of diamond buying.

CUT—Diamonds may be cut in many different shapes. Some shapes reflect more or less light depending on the number of facets in the cut. The reflected light is what gives diamonds their wonderful sparkle.

COLOR—Diamonds range in color from "white" or basically clear with just a warm tinge of color to rare & exotic colors like yellow, blue, pink or amber.

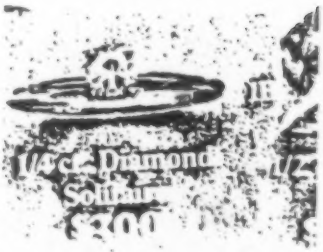
CLARITY—All diamonds naturally contain small imperfections not seen by naked eye. The amount of imperfections determine the clarity.

CARAT WEIGHT—A measurement used to define diamond size.

THE FIFTH C OF DIAMOND BUYING IS CONFIDENCE

Our highly trained diamontologists will explain the 4C's and show you any diamond under our 10 magnification gemscope to let you see the quality and value for yourself. Our professional diamond buyers travel to world diamond markets to bring you the best values.

And with our *written 90 day money back guarantee* you can't buy the wrong diamond. Plus you receive our unique life-time diamond guarantee against the loss of your diamond. So be a smart diamond buyer and buy with the 5Cs.



SHAW Jewelers

RUSH!!

No 17389

[illegible]
5300 S. 76th St., Suite 200
Greendale, Wisconsin 53129
(RAY) 414-421-3780

Name Willie Spears

Address 3547 N 19th Pl

City Milw State WI Zip Code [illegible]

Phone 444-2750

TRADE MUST BE GIVEN IN AT TIME RING IS GIVEN OUT

NOT RESPONSIBLE FOR MERCHANDISE LEFT OVER 60 DAYS

All stones checked prior to estimate		YES ☐	NO ☒
OUR MDSE. ☐	CUST. MDSE. ☒	WARRANTY	YES ☒ NO ☐
RECEIVED DATE: 3-12-86		PROMISE DATE: RUSH 3-14-86	
Charges: N/C		TAKEN IN BY: 3750	
Shop doing work:		(934)	

DESCRIPTION: 1 1/2 pt Marq Stone
1) 8 MM Brdl 4c

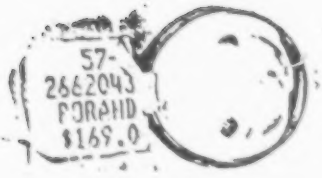
CONDITION OF MDSE: (Cracks, problems, etc.)
New

INSTRUCTIONS: Size to 8 (6 Prong)
Set Marq Stone on Brdl w/ Lind

CUSTOMER VALUATION: I AGREE THAT IF SAID ITEM IS LOST OR DAMAGED THE MAXIMUM LIABILITY OF THIS STORE IS:

$ 2450.00 Willie P. Spears
CUSTOMER SIGNATURE

I have received and inspected the above article(s). The work performed satisfaction and the article(s) are in good order.





WEIGHT .62
COLOR G-H
CLARITY VVS-2
CUT MARQ



PRICE PER CARAT _____
PRICE OF THIS STONE 2295.00
REGISTRY NO. 27-1623122 / DHEWY

JOB NO.
17389

17810

Name

Address

City State Zip Code

Phone

NOT RESPONSIBLE FOR MERCHANDISE LEFT OVER 60 DAYS

All stones checked prior to estimate		YES ☐	NO ☒
OUR MOSE ☐	CUST. MOSE. ☒	WARRANTY YES ☐	NO ☒
RECEIVED DATE 3-3-X		PROMISE DATE: 3-[illegible]-X	
Charges: 5.00		TAKEN IN BY: [illegible]	
Shop doing work: G.I.			

DESCRIPTION

CONDITION OF MOSE. (Cracks, problems, etc.)

INSTRUCTIONS

CUSTOMER VALUATION: I AGREE THAT IF SAID ITEM IS LOST OR DAMAGED THE MAXIMUM LIABILITY OF THIS STORE IS:

$ 150.00 X

CUSTOMER SIGNATURE

I have received and inspected the above article(s). The work performed is to my satisfaction and the article(s) are in good order.

RUSH

NO. 15132

Name

Address

City , State Zip Code

Phone

NOT RESPONSIBLE FOR ... ERCHANDISE LEFT OVER 60 DAYS.

All stones checked prior to estimate		YES ☒	NO ☐
OUR MDSE ☐	CUST. MDSE ☒	WARRANTY	YES ☐ NO ☐
RECEIVED DATE: 12-1-16		PROMISE DATE: Rush * 12-2-16	
Charges: N-C		TAKEN IN BY: DAVID	
Shop doing work: 134			

DESCRIPTION

CONDITION OF MDSE (Cracks, problems, etc.)

Good

INSTRUCTIONS

OVER

CUSTOMER VALUATION: I AGREE THAT IF SAID ITEM IS LOST OR DAMAGED THE MAXIMUM LIABILITY OF THIS STORE IS:

$ 1000 X

CUSTOMER SIGNATURE

I have received and inspected the above article(s). The work performed is to my satisfaction and the article(s) are in good order.



ICA,

This ring was picked up from us on 11-8-16 — Today she brought it in saying it snags on clothes. I scoped the ring finding out the sloppy job done — Please smooth out all prongs that are up or snagging.

WG 1.02
WD 3.8
6½ 3.4 mp N/C

[redacted]

JOB NO
15132

[redacted]

STOCK merch.

DATE RECEIVED 11-27-81

DATE WANTED 12-5-81

№ 0566

Name Stock

Address

Article Idg/lg Eg w

Charges $ Phone

replace stone

STOCK merch.

Shaw's Keepsake Jewelers :-: 33

5300 South 76th St. Ph: 414-421-5730

Greendale, Wis. 53129

No. 16171

SHAW'S KEEPSAKE JEWELERS

95 N. Moorland Rd.
Brookfield, Wisconsin 53005
414-782-8100

Name Patty Cleveland

Address 1950 S 77th St.

City W. Allis State WI Zip Code 53219

Phone 546-2339

NOT RESPONSIBLE FOR MERCHANDISE LEFT OVER 60 DAYS.

All stones checked prior to estimate		YES ☒	NO ☐
OUR MDSE. ☐	CUST. MDSE. ☒	WARRANTY	YES ☐ NO ☐
RECEIVED DATE: 9/30		PROMISE DATE: 10/10	86 adds- 5.00
Charges: W/C.		TAKEN IN BY: CLL	
Shop doing work: 1934			

DESCRIPTION: 14KW/S eng. set. dia./staff 25 stff 2 dia / 1 dia. center stone

CONDITION OF MDSE: (Cracks, problems, etc.)

UTCH

INSTRUCTIONS: Rhodium-plate / tip/ add. amount

CUSTOMER VALUATION: I AGREE THAT IF SAID ITEM IS LOST OR DAMAGED THE MAXIMUM LIABILITY OF THIS STORE IS:

$ 1200.00 x Patty Cleveland
CUSTOMER SIGNATURE

I have received and inspected the above article(s). The work performed is to my satisfaction and the article(s) are in good order.

Replace diamond w/ same size as the other side diamond.

LLO 4 dia. 2 sapph



5 3/4

Jr look at the diamonds + sapphires & then talk to me - they is very upset!

JDB
11/16/71

State of WISCONSIN

Certificate of Apprenticeship

IRA R. BANKS

has satisfactorily served a apprenticeship in the employ of

FINLAY DEPTS. INC. (GIMBELS)

at the trade of

JEWELER

and has completed 424 *hours of related school instruction, in accordance w the Statutes of the State of Wisconsin a is hereby recognized as a journeyman, togc with all the rights, privileges, and opportunities which everywhere pertain thereto.*

WHEREOF let this diploma, with offi-ial signatures and the Seal of the Wisco Department of Industry, Labor and Hum-n Relations, bear witness.

Given in the State of Wisconsin this 9 *day of* DECEMBER *1974 A.D.*

Charles T. Hyde
State Administrator

K. [illegible]

(110)

BANKS IRA P — SOCIAL SECURITY NUMBER

MANKILING, — BASIS OF ADMISSION

FROM

	COURSE NUMBER	COURSE TITLE	COURSE VALUE	GRADE
		SEMESTER 1 1969-70		
	331	SMALL BUSINESS MGMT	2.0	B
		SEMESTER 2 1969-70		
	375	JEWELRY REPAIR 1	3.0	B
	300	MICRO SKLS TECHS 1	10.0	B
	302	MICRO SKLS TECHS 2	10.0	IB
	551	JOB RELATIONS	1.0	B
	552	ECONOMIC RELATIONS	1.0	C
		SEMESTER 1 1970-71		
	371	BUSINESS JEWELRY	6.0	C
	376	JEWELRY REPAIR 2	3.0	C
	107	MICRO SKLS TECHS 2	10.0	B
	311	WATCH REPAIRING 1	10.0	IC
	554	TIME IN & COMST	2.0	C
	554	WATCH IN & OUT ST	2.0	I
		SEMESTER 2 1970-71		
	553	JEWELRY MAKING 1	6.0	C
	553	JEWELRY MAKING 1	6.0	C
	311	WATCH REPAIRING 1	10.0	C
	312	WATCH REPAIRING 2	10.0	C
	313	WATCH REPAIRING 3	12.0	IC
	555	WATCH RG ADJ TECH 1	2.0	D
	556	WATCH RG ADJ TECH 2	2.0	D
		SEMESTER 1 1971-72		
	313	WATCH REPAIRING 3	12.0	C
	314	WATCH REC & ADJ	12.0	C
		Diploma issued to student for completing the Watch and Allied Instrument Repair Program - June, 1972		
		Banks, Ira R.		

MILWAUKEE AREA TECHNICAL COLLEGE

IRA ROOSEVELT BANKS

HAS COMPLETED IN A SATISFACTORY MANNER THE PRESCRIBED CURRICULUM FOR

Watch and Allied Instrument Repair

AND IN TESTIMONY THEREOF IS AWARDED THIS

Diploma of Graduation

Dated at Milwaukee, in the State of Wisconsin, this Second day of June, Nineteen Hundred and Seventy-Two.

For the District 9 Area Board of Vocational, Technical and Adult Education

For the Faculty

MILWAUKEE AREA TECHNICAL COLLEGE
1015 North Sixth Street
Milwaukee, Wisconsin 53203

Evening School Adult Record

Name of Student: Banks, Tra R.

SOC SEC NUMBER: 429 82 9699

DEPARTMENT AND COURSE NUMBER	SEMESTER	C O
441 322	Semester 2 1971-72	Watch & Cloc
441 322	Semester 1 1972-73	Watch Repair
441 322	Semester 2 1972-73	Watch Repair
441 322	Semester 1 1973-74	Watch Repair
441 322	Semester 2 1973-74	Watch Repair
441 322	Semester 1 1974-75	Watch Repair
441 322	Semester 2 1974-75	Watch Repair
441 322	Semester 1 1975-76	Watch Repair
202 565	Semester 2 1975-76	Gem Identifi
441 422	Semester 2 1975-76	Watch Repair
441 422	Semester 1 1976-77	Watch Repair
441 422	Semester 2 1976-77	Watch Repair
441 422	Semester 1 1977-78	Watch Repair
441 422	Semester 2 1977-78	Watch Repair
441 422	Semester 1 1978-79	Watch Repair
441 422	Semester 2 1978-79	Watch Repair

1C00009340000009467

1 Control number		OMB No. 1545-0008
1477		

2 Employer's name, address, and ZIP code	3 Employer's identification number	4 Employer's State number
STERLING MERCHANDISE INC. 1585 FREDERICK BLVD. AKRON OH 44320	34-0630873	

5 Statutory employee	Deceased	Legal rep.	942 emp.	Subtotal	Void
☐	☐	☐	☐	☐	☐

6 Allocated tips	7 Advance EIC payment
0.00	0.00

8 Employee's social security number	9 Federal income tax withheld	10 Wages, tips, other compensation	11 Social security tax withheld
429-82-9699	4,959.91	25,676.83	1,281.21

12 Employee's name, address, and ZIP code	13 Social security wages	14 Social security tips
IRA BANKS 6507 84TH STREET MILWAUKEE WI 53224	25,676.83	

16		

17 State income tax	18 State wages, tips, etc.	19 Name of State
1,634.60	25,676.83	WI

20 Local income tax	21 Local wages, tips, etc.	22 Name of locality
0.00	9,665.40	MILWAUKE

Form W-2 Wage and Tax Statement 1985

Copy C For employee's records
This information is being furnished to the Internal Revenue Service.

Department of the Treasury
Internal Revenue Service

36-2931616

(115)

2 Employer's name, address, and ZIP code

2325

STERLING INCORPORATED
1525 FREDERICK BLVD.
AKRON OH
AKRON OH 44320

Copy 2 To be filed with employee's City income tax return. Employee's and employer's copy compared ☐

3 Employer's identification number: 34-0653873

4 Employer's state I.D. number:

5 Statutory employee ☐ Deceased ☐ Legal rep ☐ 942 emp. ☐

6 Allocated tips: 0.00

7 Advance EIC payment: 0.00

8 Employee's social security number	9 Federal income tax withheld	10 Wages, tips, other compensation	11 Social security tax withheld
429-82-9699	5,237.36	26,834.53	1,922.24

12 Employee's name address and ZIP code

IRA BANKS

657 84TH STREET
MILWAUKEE WI
53224

L

13 Social security wages: 26,834.53

14 Social security tips:

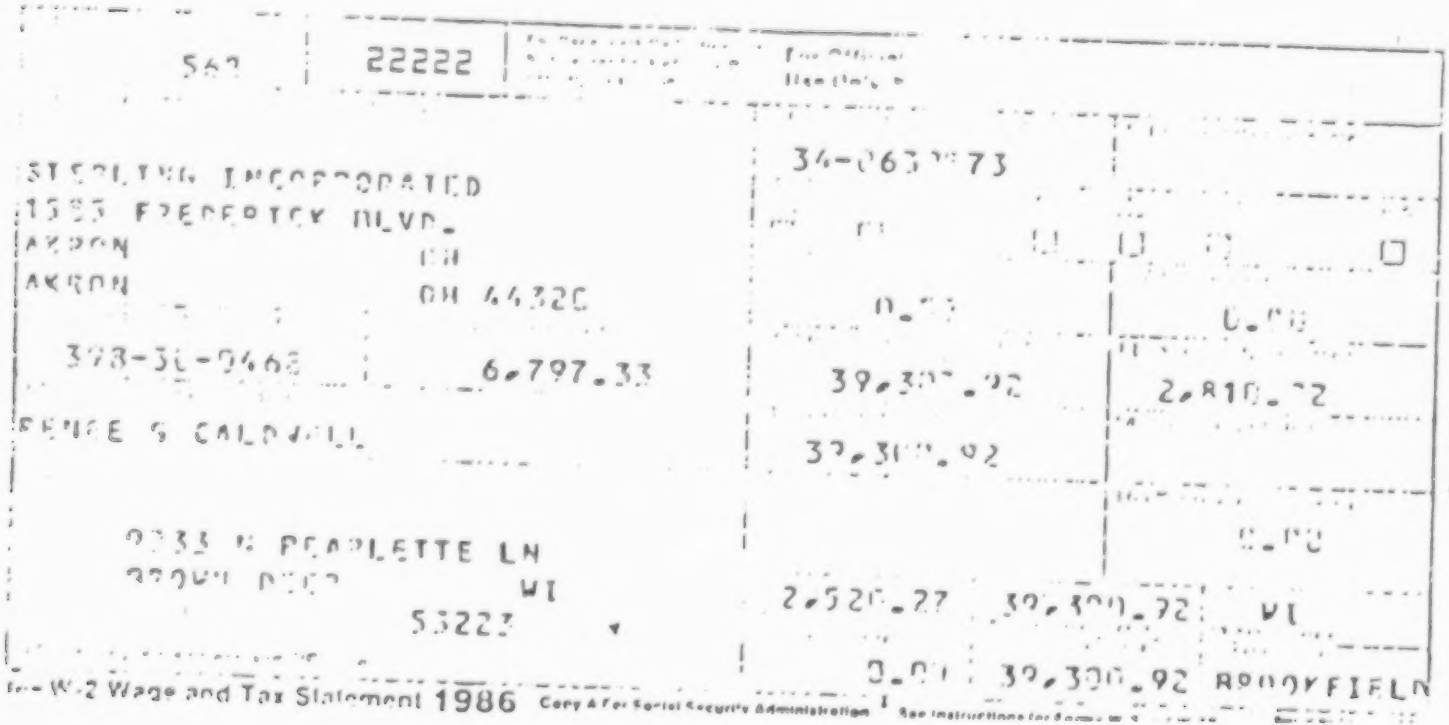
16:

16a Fringe benefits incl. in Box 10: 0.00

17 State income tax	18 State wages, tips, etc.	19 Name of state
20 Local income tax	**21 Local wages, tips, etc.**	**22 Name of locality**
0.00	26,834.53	BROOKF

Form W-2 Wage and Tax Statement 1986

OMB No. 1545-0008

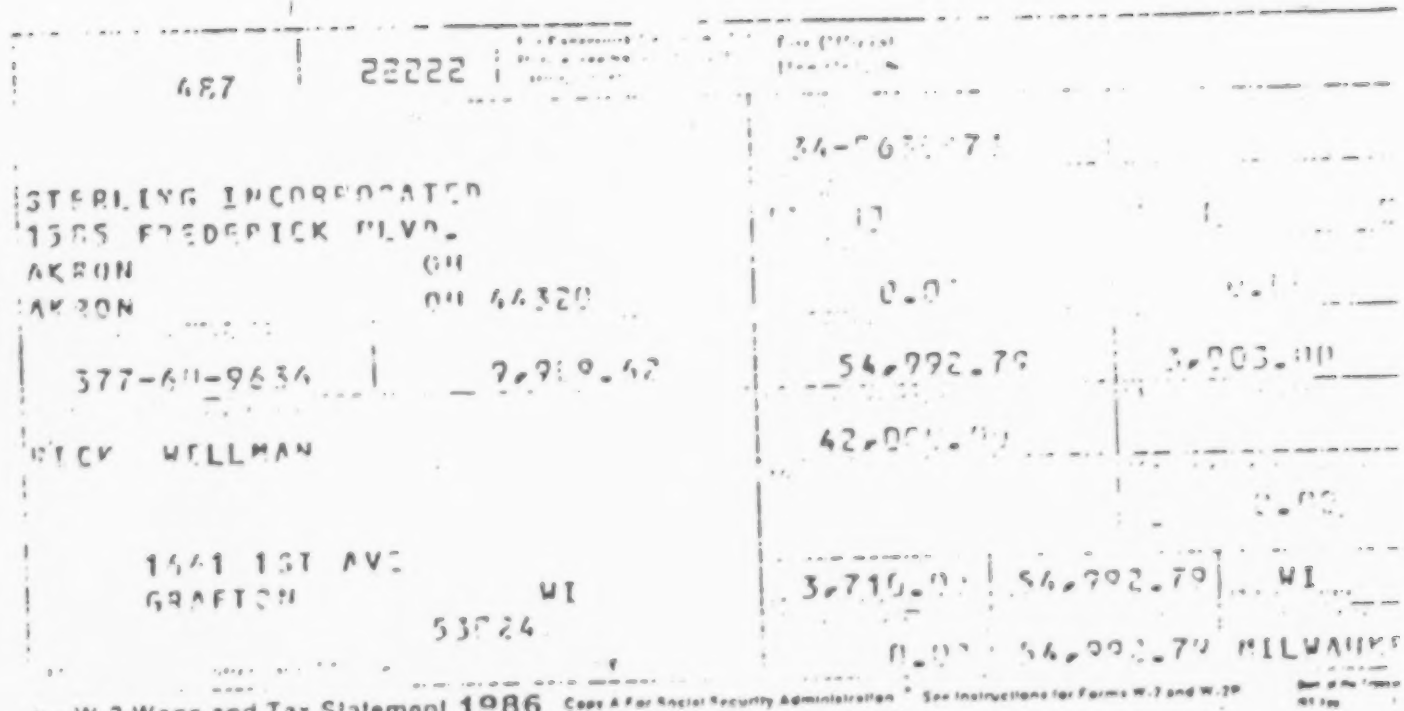


567	22222		
STERLING INCORPORATED 1583 FREDERICK BLVD. AKRON AKRON OH 44320		34-0633973	
		0.00	0.00
378-36-9468	6,797.33	39,330.92	2,810.92
BRUCE S CALDWELL		39,330.92	
9333 N PEAPLETTE LN BROOKFIELD WI 53223			0.00
		2,520.27 39,330.92	WI
		0.00 39,330.92	BROOKFIELD

Form W-2 Wage and Tax Statement 1986 Copy A For Social Security Administration — See instructions for Form W-2

(116)

(17)



687 22222

STERLING INCORPORATED
1505 FREDERICK BLVD.
AKRON OH
AKRON OH 44320

377-61-9634 2,910.42

RICK HELLMAN

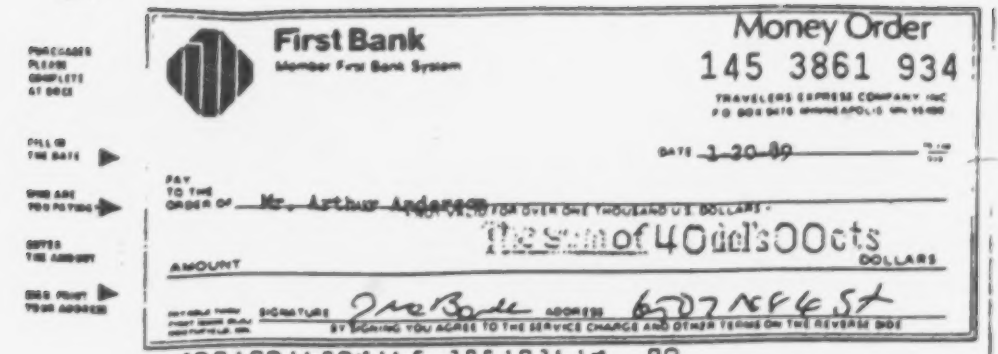
1441 1ST AVE
GRAFTON WI
53024

54,992.79 3,003.00

3,710.00 54,992.79 WI

54,992.79 MILWAUK

W-2 Wage and Tax Statement 1986 Copy A For Social Security Administration • See Instructions for Forms W-2 and W-3



First Bank
Member First Bank System

Money Order
145 3861 934

TRAVELERS EXPRESS COMPANY, INC.
P.O. BOX 0470 MINNEAPOLIS, MN 55480

FILL IN THE DATE ▶ DATE 1-20-89

PAY TO THE ORDER OF Mr. Arthur Anderson NOT VALID FOR OVER ONE THOUSAND U.S. DOLLARS

AMOUNT the sum of 40 dol's 00 cts DOLLARS

SIGN HERE ▶ SIGNATURE Ira Banks ADDRESS 6507 N 44 St

BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

⑆091901480⑆145 3861934⑆ 90

AO 89 (Rev. 5/85) Subpoena

United States District Court

DISTRICT OF

IRA R. BANKS,
PLAINTIFF,

V

STERLING MERCHANDISE, INC.
AND
SHAW,S JEWELERS,
DEFENDANT,

SUBPOENA

CASE NUMBER 87- C -0802

TYPE OF CASE	SUBPOENA FOR
☒ CIVIL ☐ CRIMINAL	☒ PERSON ☐ DOCUMENT(S) or OBJECT(S)

TO: Mr. Arthur Anderson
2675 North Mayfair Road
Suite 305
Wauwatosa, Wisconsin 53226-1346

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE	COURTROOM
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN 517 E. Wisconsin ave. Milwaukee,Wisconsin	242
	DATE AND TIME Jan. 23,1989 9, O.Clock AM

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

Lexington Fayette Urban County Government

HUMAN RIGHTS COMMISSION

Filed

JUL 27 1987

Charles E. Powell, Chairperson
Leleah Logan, Vice-Chairperson
William Wharton, Treasurer
Edward Hopper, Secretary

W. Ed Mansfield, Executive Director

July 27, 1987

Mr. William Logan 3836 Gladman Way Lexington, Kentucky 40503	Charging Party	) HRC NO.) 01-87-058)
LeRoy's Jeweler's Turfland Mall, Harrodsburg Road Lexington, Kentucky	Respondent	) CHARGE NO.) 421-87-0275)

** ** **

DETERMINATION

Under the authority vested in me by Rule 2.050(2)(a) of the Rules of Practice and Procedure of the Lexington-Fayette Urban County Human Rights Commission, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Ordinance 190-83, and timeliness and all other jurisdictional requirements have been met.

Charging Party alleges failure to promote and discharge based on his race and sex.

Respondent indicates that Charging Party was discharged for failure to observe proper security procedures.

Evidence of record reveals that Charging Party had been counseled regarding security infractions on a number of occasions.

Further, that the White Female named in his charge was not a salesperson and was not responsible for the security of "the ring" in question.

CHARGE OF DIS MINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

CHARGE NUMBER
FEPA 01-87-058
EEOC 21A870275

Lexington-Fayette Urban County Human Rights Commission and EEOC
(State or local Agency, if any)

NAME (Indicate Mr., Mrs., or Miss) — HOME TELEPHONE NO. (Include Area Code)
Mr. William Logan — (606)223-4368

STREET ADDRESS — CITY, STATE AND ZIP CODE — COUNTY
3836 Gladman Way, Lex., KY 40503 — Fayette

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NO. OF EMPLOYEES/MEMBERS	TELEPHONE NUMBER (Include Area Code)
LeRoy's Jewelers	25+	(606)278-5467

STREET ADDRESS — CITY, STATE AND ZIP CODE
Turfland Mall, Harrodsburg Rd, Lex., KY 40504

NAME — TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS — CITY, STATE AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))
☒ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ AGE ☐ RETALIATION ☐ OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year)
Jan. 5, 1987

THE PARTICULARS ARE (If additional space is needed, attached extra sheet(s)):

I was recently discharged from my position.

I was told by Jeff (White Male) that I was being released because a sale ring was nearly lost.

I do not believe that the Respondent's agent was fair about their decision inasmuch as:

a. I was a good employee.

b. The item in question was not lost.

c. The incident in question was handled by myself and a white female, Ms. Rankin. However, she was not cited or discharged for her action.

d. Subsequent to my discharge she was promoted. I was merely promised promotions and pay increase.

Therefore, because of the foregoing, I believe that I was discharged from my position because of my race, Black, sex, Male and denied and/or passed over for a promotional opportunity because of my race, Black and sex, Male and I so charge.

☐ I also want this charge filed with the EEOC.
I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet State and Local Requirements)
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

1-A-87 William Logan
Charging Party (Signature)

SIGNATURE OF COMPLAINANT
William M Logan
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
14-1-87

EEOC FORM 5 (5-80) — PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE AND MUST NOT BE USED

(120)

FILE COPY